

Fujitsu Purchasing Terms and Conditions (Feb 2016 – Short Form Contract)

This Purchase Order shall be governed by these Fujitsu Purchase Order Terms and Conditions (hereinafter referred to as “**these Terms and Conditions**”) as set forth below unless the Supplier has signed a separate supply agreement with Fujitsu, in which case the terms and conditions of that agreement shall control the provision of Supplies 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 and Conditions shall, together with the Purchase Order (including its Schedules), regulate the purchase of the Supplies defined in this Purchase Order.

1. Definitions

1.1 In these Terms and Conditions unless the context otherwise requires:

“**Charges**” means the charges for the Supplies.

“**Confidential Information**” means these Terms and Conditions, the Purchase Order, and information disclosed by one party (“**Disclosing Party**”) to the other (“**Receiving Party**”) to the extent that such information is designated as such by the Disclosing Party in writing or relates to the business affairs, developments, trade secrets, know-how, personnel, customers, suppliers, specifications, drawings, designs, descriptions, operational and testing information, technical information and all other information of a confidential nature furnished by the Disclosing Party or that such information may reasonably be regarded as the confidential information of the Disclosing Party.

“**Delivery Date**” means the date for delivery of the Supplies as set out in this Purchase Order or agreed between the parties in writing.

“**Export Control Laws**” means trade, export control and import control laws and regulations of the EU, the Republic of Ireland, the UK, Japan, the United States of America and any other jurisdiction in which Products are manufactured or through which they are transported and any final destination to which products may be exported by Fujitsu.

“**Fujitsu**” means Fujitsu (Ireland) Limited whose registered address is at 100, Airside Business Park, Swords, Co. Dublin.

“**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 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.

“**Products**” means any documentation, deliverables, equipment and/or Programs set out in this Purchase Order.

“**Product Description**” means the description of the Supplies set out in this Purchase Order and in the product, software and/or service description published (including electronically) by the Supplier or manufacturer at the time that this Purchase Order is placed.

“**Programs**” means any items referred to as programs or software in this Purchase Order (including any programs or software that may be embedded in equipment supplied by the Supplier and/or any associated documentation which may be supplied with them).

“**Purchase Order**” means this purchase order form and any schedules to it or other terms referred to in it, but excludes any other printed terms or conditions of sale or purchase or other form of documents.

“**Services**” means any services described in this Purchase Order.

“**Supplies**” means the Products and/or Services described in this Purchase Order.

“**Supplier**” means the recipient of this Purchase Order.

“**Warranty Period**” means in respect of Products, twelve (12) months after the later of (i) the Delivery Date; (ii) date of acceptance; or (iii) date of installation, and in relation to Services, ninety (90) days after the date of completion of the Services.

1.2 References to any statute, regulation or statutory provision shall, unless the context otherwise requires, be construed as a reference to that statute, regulation or provision as from time to time amended, consolidated, modified, extended, re-enacted, replaced and all statutory instruments or orders made pursuant to it.

1.3 Any phrase introduced by the word “including”, “include” or any similar expression shall be construed as illustrative and the words following any such word shall not limit the sense of the words preceding such words. References to the singular shall include the plural and vice versa. The headings in these Terms and Conditions are inserted for convenience only and shall not constitute a part of or be referred to in interpreting these Terms and Conditions.

2. Supplier's Obligations and Warranties

2.1 **Purchase Order Acceptance and Cancellation.** The Supplier has read and understood these Terms and Conditions, and agrees that (i) the Supplier's written acceptance or commencement of any work, (ii) its delivery of any Supplies; or (iii) if it does not object to these Terms and Conditions or any of its schedules under this Purchase Order within three (3) business days of issuance by Fujitsu, then subject to any rights of termination or cancellation under these Terms and Conditions, shall otherwise constitute Supplier's acceptance of this Purchase Order and these Terms and Conditions. Fujitsu reserves the right to cancel all or any part of this Purchase Order if this Purchase Order is not accepted by Supplier within three (3) business days from the date of issue by Fujitsu, without incurring any liability whatsoever.

2.2 **Supplier Warranties:** The Supplier warrants, represents and undertakes that:

(a) the Supplies will meet any performance criteria and conform in all respects with any Product Description or sample;

(b) it owns, and is able to provide good title to Fujitsu, or in the case of Programs is otherwise licensed to provide, the Products which it supplies pursuant to these Terms and Conditions;

(c) all Products (including any replacements) will be new, of satisfactory quality, and fit for their intended purpose and be free and clear of all liens, encumbrances, security interest and other claims due to Supplier; and where relevant (i) are fully compliant with Directive 2011/65/EU on the restriction of certain hazardous substances in electrical and electronic equipment as implemented by EU Member States except for relevant exemptions where they apply and which shall be notified in writing to Fujitsu by the Supplier; (ii) are fully compliant the Registration Evaluation and Authorisation of Chemicals Regulation (EC 1907/2006); (iii) it shall comply with the Waste Electrical and Electronic Equipment Regulations 2013;

(d) all Services will be performed diligently, with all reasonable skill and care to at least industry standard by appropriately trained experienced and qualified personnel;

(e) it will ensure that the Services conform with the service description set out in this Purchase Order;

(f) it will co-operate fully with Fujitsu, its customers, agents and subcontractors;

(g) in the case of Programs, the media on which the Programs are delivered will be free of defects in materials and workmanship under normal use during the Warranty Period;

(h) it has used its best endeavours to detect and remove computer viruses in any Programs and that the Programs as delivered to the best of the Supplier's knowledge do not contain any computer viruses or software routines designed to disable, damage, impair or erase the Programs;

(i) where the Supplies include any embedded software, and/or where and to the extent that any Intellectual Property Rights subsist in the Supplies, then, the Supplier has obtained all necessary approvals, rights, titles and licenses to sell or otherwise transfer the Supplies 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. This warranty explicitly includes any open source software or other third party software components integrated into or provided with the Supplies. The Supplier 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 Supplies; and

(j) Charges stated in this Purchase Order are fixed at the date of this Purchase Order and may not be varied unless stated in this Purchase Order. However the Supplier shall pass on to Fujitsu any decrease of prices including, but not limited to the prices on Supplier's standard price list for Supplies occurred before delivery.

2.3 **Health and Safety.** The Supplier shall comply with all relevant health and safety legislation and any reasonable security, health and safety policies or other requirements that apply to Fujitsu's or customers' premises.

2.4 **Security and Immigration Checks.** The Supplier shall comply with all security and related policies notified by Fujitsu and shall promptly provide such information regarding its compliance as may be reasonably required by Fujitsu. The Supplier shall only use employees, agents or contractors (“**Personnel**”) who are authorised to work for the duration of these Terms and Conditions in the country where the Supplies are being provided.

2.5 **Data Protection.** The 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 instructions and all relevant privacy legislation. In this regard, the 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 the Supplier's authorised Personnel with a legitimate role in fulfilling its obligations under this Purchase Order may have access to the Personal Data. The 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 the Supplier transfers Personal Data outside of the European Economic Area pursuant to this Clause, such transfer shall be subject to the Standard Contractual Clauses issued by the European Commission. The Supplier is responsible for the compliance of its Personnel and subcontractors with its obligations under this Clause and shall indemnify Fujitsu 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 2.5.

2.6 **Business Continuity.** The Supplier shall ensure that it has adequate security, business continuity and disaster recovery procedures in place to cope with the risk of major operational disruptions.

2.7 **Compliance with Laws and Corporate Social Responsibility.** The Supplier shall comply with (i) all laws, regulations, privacy principles, ordinances, codes of practice, directives, and local country standards (including, but not limited to those found at <http://www.fujitsu.com/uk/about/local/master-policies/>) and orders, and all amendments thereto, now enacted or hereafter promulgated; (ii) any governmental policies, guidelines and code of conduct relevant to the Supplier's obligations; and (iii) as otherwise communicated by Fujitsu to the Supplier from time to time. The 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 these Terms and Conditions. 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 under this Purchase Order. The Supplier shall, at all times, comply with the applicable laws relating to anti-bribery including but not limited to the Prevention of Corruption Acts 1889-2010, the UK Bribery Act 2010, the OECD Convention policies against corruption, and the Foreign Corrupt Practices Act of the USA (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. The Supplier shall have and maintain in place throughout the term of this Purchase Order its own policies and procedures to ensure compliance with the Applicable Anti-Bribery Laws and shall enforce them where appropriate. The Supplier shall (i) not use child labour or involuntary labour 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.

2.8 **Conflicts of Interest.** The Supplier shall, during the term of these Terms and Conditions and for a period of four (4) years after termination or expiry, take appropriate steps to ensure that neither the Supplier nor any of its employees, agents or subcontractors are placed in a position where (in the reasonable opinion of Fujitsu) there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier or its employees, agents or subcontractors and the duties owed to Fujitsu and to Fujitsu's customers under these Terms and Conditions.

2.9 **Discontinuance of Supply:** Subject to the warranties set forth herein, Supplier warrants that for twelve (12) months after the completion, expiration or termination (as applicable) 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 twelve (12) month period, Supplier shall (i) give not less than three (3) months' prior written notice if it intends to no longer provide such Supplies, and (ii) provide Fujitsu all necessary information and documentation, whether or not proprietary or confidential, necessary to enable Fujitsu to maintain and repair discontinued Products, either directly or through one or more subcontractors.

3. Delivery, Inspection and Acceptance

3.1 Supplier shall deliver all Supplies, 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) and in accordance with and specific provisions in the Purchase Order and the applicable Incoterms® 2010 set out in the table below, and in compliance with Clause 9.3. In case of any inconsistency between these Terms and Conditions and Incoterms® 2010, these Terms and Conditions shall prevail. Supplier shall, when relevant and at its own cost, prepare and submit to Fujitsu all documents and drawings, if any, required under this Purchase Order.

| ORIGIN | DESTINATION | | |
|------------|------------------------------------|---|--------------------|
| | Within EU | Outside EU | Fujitsu Collection |
| Within EU | CIP(“Carriage and Insurance Paid”) | FCA (“Free Carrier”) (unless DAT (“Delivered at Terminal”) is agreed) | CIP |
| Outside EU | DDP (“Delivery Duty Paid”) | FCA (unless DAT is agreed) | FCA |

The number of separate packages must be identified and all packages must be (i) marked with the Supplier's name, the final destination address shown in the Purchase Order, and any hazard warnings appropriate to the contents; and (ii) suitably packed and secured.

3.2 The Supplier shall ensure that one copy of an advice note stating the Purchase Order number, the number of packages and the method and route of transport accompanies the Supplies and that a further copy is given to any third party carrier.

3.3 For Supplies delivered in instalments, the Purchase Order shall be construed as a single contract in respect of each instalment. However, where Fujitsu has a right to reject any particular instalment, it may at its option reject the entire Purchase Order or the instalment.

3.4 Fujitsu may perform a delivery inspection and/or test of the Supplies delivered by Supplier under this Purchase Order. Any defects found during such delivery inspection or test shall be duly documented and within ten (10) business days from inspection of the Supplies and be reported to Supplier in writing. If Fujitsu does not report any defects within the stipulated time frame, the Supplies shall be deemed to be subject to acceptance. Acceptance does not waive Fujitsu's right to subsequently reject Supplies which are found upon first usage to be not functioning correctly. If Fujitsu submits a report on defects, the remedies set out in Clause 7 shall apply. Operational use or payment of the Supplies prior to formal acceptance shall not constitute an implied declaration of acceptance by Fujitsu.

4. Time for Delivery and Performance of the Supplies

4.1 The Supplies may not be delivered or performed earlier or later than the Delivery Date without Fujitsu's permission, otherwise Fujitsu may reject them. Time shall be of the essence of these Terms and Conditions and the Purchase Order in relation to delivery of the Supplies.

4.2 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 per cent (3%) of the total value of this Purchase Order. The maximum liquidated damages due to a delay shall be limited to twenty-four (24%) 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 Conditions and at law.

5. Title and Risk

5.1 Title and risk in the Products shall pass to Fujitsu on delivery, following off-loading and stacking, except that if the Products are paid for before delivery ownership shall pass to Fujitsu once payment has been made.

6. Programs and Support Services

6.1 Where the Supplies include Programs, which shall include all or any embedded software, and/or where and to the extent that any Supplier Intellectual Property Rights subsist in the Supplies, then, subject always to Clause 10.2, the Supplier hereby grants Fujitsu an irrevocable, non-exclusive licence, with authority to sell or grant sub-licences directly or indirectly to Fujitsu's end-customers, to use and/or to permit third parties to use each copy of such Programs and to make such other copies as is reasonably necessary to support such licensed use.

6.2 Where the Supplies are created or modified for Fujitsu, the Supplier hereby grants Fujitsu a licence in the terms of Clause 6.1 above (save that such licence shall be exclusive) for the period commencing immediately upon their creation until such time as all Intellectual Property Rights are fully and completely vested in Fujitsu pursuant to Clause 10.3.

6.3 Where the Supplier grants Fujitsu a periodic licence and the fees are payable on a recurring basis, Fujitsu shall have the right to terminate the licence in writing on not less than thirty (30) days' notice, such notice to take effect at the end of the then current period.

6.4 **Support Services.** If any support services are required such services shall be agreed in the Purchase Order. Invoicing for Support Services may be sent by Supplier to Fujitsu monthly in arrears. Service levels, availability and related service level credits shall be agreed upon in the Purchase Order.

7. Remedies

7.1 In relation to the Supplies, the Supplier undertakes that:

(a) in the case of Products, if within the Warranty Period or a reasonable time thereafter, Fujitsu notifies the Supplier that the Products are in breach of warranty or the provisions of these Terms and Conditions then, at Fujitsu's option, (i) the Supplier will promptly repair or, at Fujitsu's option, replace, the Products so as to remedy the matter constituting the breach without cost (including transportation costs) to Fujitsu; or (ii) the Supplier will accept rejection and return of the Products by Fujitsu, whether or not any of the Products have been accepted, and the Supplier shall immediately upon receipt return any payments made by Fujitsu in respect of those Products. For the avoidance of doubt, risk and title in rejected Products shall immediately on rejection revert to the Supplier; and

(b) in the case of Services, if within the Warranty Period or a reasonable time thereafter, Fujitsu gives written notice that the Services are in breach of warranty or the provisions of these Terms and Conditions, the Supplier shall promptly re-perform the Services at no cost to Fujitsu. Where the Supplier fails to provide such remedy, Fujitsu may remedy or have remedied the matter constituting the breach at the cost of the Supplier; and

(c) in any case, if during the Warranty Period the Supplies are in breach of warranty or otherwise in breach of these Terms and Conditions, Fujitsu may, at its option, cancel the Purchase Order, at no cost to or liability to Fujitsu, and/or refuse to accept any further deliveries and/or performance of Supplies. The Supplier shall immediately refund any charges paid in advance by Fujitsu in respect of the Supplies.

7.2 Without prejudice to Fujitsu's rights under Clause 7.1, if during the Warranty Period or within two (2) years of its expiry, the Products develop any persistent defects, failures or non-conformities, the Supplier will, on Fujitsu's request, review such defects, failures or non-conformities with Fujitsu and indicate steps or recommendations which in the Supplier's reasonable judgement would remedy the same. Subject to an agreed action plan, the Supplier shall at its own cost remedy the defects, failures and non-conformities. Where the Supplier fails to provide such remedy, Fujitsu may remedy or have remedied the failure, defect or non-conformity at the Supplier's cost and reject deliveries of Supplies until the source of failures, defects and non-conformities has been cured.

7.3 Fujitsu's rights and remedies under Clause 7 are in addition to its other rights and remedies under these Terms and Conditions or at law.

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

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- 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 thirty (30) days from the valid invoice date.
- 8.3 **Invoice.** 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 (Ireland) 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 Irish 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) coded products 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; (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 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 a 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 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.
- 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 Ireland and, without prejudice to Clause 11 (Dispute Resolution Procedure), the parties submit to the exclusive jurisdiction of the Irish 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.