

FUJITSU GENERAL (AUST.) PTY LIMITED
A.C.N. 001 229 554
TERMS AND CONDITIONS OF SALE

1. DEFINITIONS

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

- (a) "Buyer" means the Person named in the Sales Invoice.
- (b) "Sales Invoice" means the sales invoice issued by the Seller to the Buyer.
- (c) "Seller" means Fujitsu General (Aust.) Pty Limited A.C.N. 001 229 554 its successors and assigns.
- (d) "Goods" means the goods supplied by the Seller to the Buyer including, but not limited to the goods supplied in the Sales Invoice.
- (e) "Insolvency Event" means the making or filing of an application to wind up a party (otherwise than for the purpose of reconstruction or amalgamation) under any law relating to bankruptcy or insolvency; the appointment of a liquidator, receiver, administrator or controller to a party or to all or substantially all of the property of a party; a party is placed under official management; the making by a party of an assignment or attempted assignment for the benefit of its creditors; a party is insolvent or presumed to be insolvent under any applicable law; or anything having a substantially similar effect to any of the events specified above happens to a party under the law of any jurisdiction.
- (f) "Personal Information" has the meaning given to that term in the *Privacy Act 1988* (Cth).

2. INTERPRETATION

These Terms and Conditions:

- (a) Replace all prior terms and conditions issued by Seller to Buyer;
- (b) Take precedence over any terms set out in the Buyer's purchase order, to the extent of any inconsistency.
- (c) Any special conditions specified on Sales Invoice shall, to the extent they are inconsistent with these Terms and Conditions, take precedence over these Terms and Conditions.
- (d) The expression "Person" includes an individual, a body politic, a corporation, an association (incorporated or unincorporated), a statutory authority or any other authority or persons identified as the Seller.

3. ALTERATION TO TERMS AND CONDITIONS

The Seller may, at any time and from time to time by providing reasonable written notice to the Buyer, alter these Terms and Conditions of Sale.

The placing of an order, receipt of the stock as ordered and subsequent payment of an invoice relating to that order by the Buyer will indicate the Buyer's acknowledgement and agreement to these and any amended Terms and Conditions. Amendment to the Terms and Conditions will only apply to orders placed after the date of the relevant notice.

4. TERMS OF PAYMENT

- (a) If the Buyer has an approved credit account with the Seller, payment by the Buyer for goods and services supplied must be paid for within 30 calendar days of the end of month in which the goods and services are invoiced.
- (b) In the event of the Buyer's failure to comply with these payment terms Seller reserves the right to charge a default charge calculated on a daily basis on any overdue payments at an annual rate equal to 2% above the current Reserve Bank cash rate.

5. CLAIMS

Buyer shall inspect all goods supplied upon delivery. To the full extent permitted by law, Seller shall not be liable for shortages or damage in delivery unless Buyer submits a written claim, detailing the unit(s) involved and their relevant serial numbers, to Seller within seven (7) days of receipt of the delivery.

6. GOVERNING LAW

These Terms and Conditions and any contract including them shall be governed by the laws of the State of New South Wales and Seller and Buyer submit to the non-exclusive jurisdiction of the Courts for that State.

7. PRICES, QUOTATIONS

- (a) In the absence of contrary express agreement, the price for goods supplied shall be Seller's list price ruling at the date of shipping and the charge for services supplied shall be at Seller's prevailing rates at the time of supply. Prices quoted in Seller's published price list or by Seller's representatives are subject to change with reasonable prior written notice by Seller; provided that any price changes will only apply to orders submitted after notice of the change has been provided.
- (b) All prices are expressed net of any applicable goods and services tax, freight charges, and customs duty that shall be added to the amount to be paid by Buyer.
- (c) The Seller shall not be bound by any condition attaching to the Buyer's order or acceptance of a sale unless the Seller in writing expressly accepts such conditions.
- (d) Every sale is subject to and conditional upon obtaining the necessary import, export or other license.
- (e) A quotation is not to be constructed as an obligation to sell but merely an invitation to sell but merely an invitation to treat and no contractual relationship shall arise until the Seller has accepted in writing the Buyer's order. All quotations lapse thirty (30) days after issue but the Seller may vary or withdraw quotation at any time on notice in writing to Buyer.
- (f) All payments shall be made in Australian dollars without deduction or set off of any kind.

8. OWNERSHIP AND RISK

- (a) Subject to clause 9(a) risk in the goods will pass to the Buyer upon delivery to the Buyer's nominated point of delivery.
- (b) Ownership of goods supplied by Seller will pass to Buyer in accordance with clause 10(a).

9. DELIVERY

- (a) If Buyer nominates their own vessel or vehicle to deliver the goods to the Buyer then risk will pass when the goods are loaded onto the Buyer's nominated vessel or vehicle and Buyer shall be responsible for arranging the insurance of the goods.

- (b) Where Buyer has nominated their own vessel or vehicle for delivery Seller shall not be liable to Buyer for any loss in the event of any failure in delivery or to arrange insurance.
- (c) The Seller reserves the right to deliver in installments and all such installments, where separately invoiced, shall be paid for without regard to the delivery of subsequent installments. A part delivery of an order shall not invalidate the balance of the order.
- (d) While the Seller shall use all reasonable endeavors to meet agreed delivery dates, Seller shall not be liable to Buyer for any loss or damage whatsoever should it be delayed or prevented from delivering goods, supplying services, or otherwise performing any of its contractual obligations due to any cause or circumstances beyond the Seller's reasonable control.
- (e) In the event of any delay in delivery or supply, as aforesaid, the due date shall be deferred for a period equal to the time lost by reason of the intervening cause or circumstance. Delivery dates are not to be treated as an essential condition of the sale.
- (f) Subject to clause 9(d), delivery dates shall not be varied once they have been agreed, without Seller's prior written approval. Should Seller agree to postpone delivery, the goods in question shall be stored at Buyer's risk and Seller reserves the right to impose a weekly storage charge to cover Seller's reasonable costs of storing the goods. Where delivery is postponed for more than 3 months Seller at the Seller's discretion to reflect the Seller's current list price may increase any fixed contract prices by notice in writing to Buyer.
- (g) Seller may at its discretion sell any goods subject to clause 9(f) still in its possession three (3) months after the mutually agreed deferred delivery date and seek damages for any loss incurred by Seller as a result of the deferment in the delivery date.

10. RETENTION OF TITLE

- (a) Title to all goods supplied by Seller to Buyer shall remain with Seller until the total amount due in respect of the goods and all monies owing to Seller by Buyer have been paid in full (the "Debts").
- (b) Buyer shall have the right to resell goods to which Seller retains title, but only as fiduciary agent and trustee for the Seller by way of bona fide sale at full market value and in the ordinary course of its business.
- (c) Until all the Debts have been paid for in full:
 - (i) Buyer shall take custody of the goods as trustee, fiduciary agent and bailee for the Seller;
 - (ii) Buyer shall keep the Seller's goods separate from any other goods and properly marked, stored, protected and insured.
 - (iii) Buyer must hold all of the money it receives ("Proceeds"):
 - (A) From sale of any property into which goods supplied by the Seller have been incorporated; or
 - (B) For the sale of goods or provision of services including the goods and services supplied by the Seller
 - (C) As bailee, fiduciary agent and trustee for the Seller, but the Buyer need not hold on trust any money exceeding the amount of the Debts at the time the money is received. Receipt by the Buyer of payment shall be treated as conclusive evidence that it has received Proceeds.
 - (D) Buyer expressly acknowledges that it is bound by fiduciary obligation created in the preceding paragraph and acknowledges that:
 - (I) It must hold the Proceeds on trust for Seller.
 - (II) It must place the whole of the Proceeds in an account separate from its own moneys (*the Proceeds Account*).
 - (III) It must maintain the Proceeds Account separate from its own moneys at all times.
 - (IV) It must maintain proper records for the Proceeds Account.
 - (V) It must not assign or encumber any book debts arising from sales made in circumstances set out in clauses 10(c)(iii) (a) and (b) or do any other acts in derogation of Seller's legal or beneficial interests.
 - (VI) It must account to Seller on demand for all moneys standing to the credit of such account;
 - (VII) Seller may appropriate payments as it thinks fit, notwithstanding any contrary appropriation by Buyer;
 - (VIII) For the purposes of identification of different consignments of goods and services purchased from Seller and receipt of Proceeds, Buyer agrees that the principle of "Last In, First Out" shall be applied to any items that cannot be distinguished.
 - (IX) Seller may trace the *Proceeds* in equity.
- (d) On demand by Seller Buyer must assign to Seller all book debts not exceeding the amount of the Debt at the date of demand.
- (e) Seller may at any time, without notice to Buyer and without prejudice to any other rights which it may have against Buyer, terminate any contract connected with the goods and the bailment referred to in paragraph (c), and enter upon any premises owned or occupied by Buyer where Seller reasonably believes the Goods may be stored, repossess the goods without liability for any damaged caused, and subsequently dispose of the goods at Seller's discretion if:
 - (i) The Debts are not paid in accordance with these Terms and Conditions and any other contract or arrangement between Seller and Buyer
 - (ii) Seller receives notice of or reasonably believes that:
 - (A) A third person may attempt to levy execution against the goods;
 - (B) Buyer is subject to an Insolvency Event;
 - (C) Buyer has entered into any arrangement or composition with its creditors, gone into liquidation, or has appointed a receiver, a receiver and manager or administrator.
- (f) If after repossession under paragraph (d) Seller sells the goods, Seller shall account to Buyer for any excess of the proceeds of sale (less expenses of repossession and sale) over the costs of the goods.
- (g) If any goods belonging to Seller are disposed of by Buyer or an insurance claim is made in respect of them, Seller shall be entitled to trace the sale or insurance proceeds, which proceeds shall be held by Buyer in a separate bank account on trust for Seller.

11. PERSONAL PROPERTY SECURITIES ACT 2009

- (a) Buyer acknowledges that these Terms and Conditions constitute a security agreement for the purposes of section 20 of the *Personal Property Securities Act 2009* ("PPSA") and that a security interest exists in all goods (and their proceeds) previously supplied by the Seller to the Buyer (if any) and in all in future goods (and their proceeds).
- (b) Buyer will execute documents and do such further acts as may be required by Seller to register the security interest granted to Seller under these Terms and Conditions under the PPSA.

- (c) Until ownership of the goods passes, the Buyer waives its rights under the following provisions of Chapter 4 of the PPSA:
 - (i) to receive a notice of intention of removal of an accession (section 95);
 - (ii) to receive a notice that the Seller decides to enforce its security interest in accordance with land law (section 118);
 - (iii) to receive notice on enforcement of security in liquid assets (section 120),
 - (iv) to receive a notice on enforcement action against liquid assets (section 121(4),
 - (v) to receive a notice to seize collateral (section 123),
 - (vi) to receive notice on enforcement of security interests in liquid assets (section 125),
 - (vii) to receive a notice of disposal of goods by Seller purchasing the goods (section 129);
 - (viii) to receive a notice to dispose of goods (section 130);
 - (ix) to receive a statement of account following disposal of goods (section 132(2));
 - (x) to receive a statement of account if no disposal of goods for each 6 month period (section 132(4));
 - (xi) to receive notice of any proposal of Seller to retain goods (section 135(2));
 - (xii) to object to any proposal of Seller to either retain or dispose of goods (section 137(2));
 - (xiii) to redeem the goods (section 142);
 - (xiv) to reinstate the security agreement (section 143);
 - (xv) to receive a notice of any verification statement (see section 157(1) and section 157(3);
- (d) Buyer further agrees that where Seller has rights in addition to those under Chapter 4 of the PPSA, those rights will continue to apply.
- (e) Until ownership of the goods passes, Buyer must not give to Seller a written demand or allow any other person to give Seller a written demand requiring Seller to register a financing change statement under the PPSA or enter into or allow any other person to enter into the register of personal property securities a financing change statement under the PPSA.
- (f) Buyer acknowledges that it has received value as at the date of first delivery of the goods and has not agreed to postpone the time for attachment of the security interest (as defined in the PPSA) granted to Seller under these Terms and Conditions.
- (g) Buyer irrevocably grants to Seller the right to enter upon the Buyer's property or premises, without notice, and without being in any way liable to the Buyer or to any third party, if Seller has cause to exercise any of Seller's rights under section 123 and/or section 128 of the PPSA, and Buyer shall indemnify Seller from any claims made by any third party as a result of such exercise.

12. INSTALLATION

Seller's Sale Invoice is made on a supply only basis. Installation and commissioning (if any) is at the expense of Buyer unless otherwise specified in writing by Seller.

13. DIMENSIONS, PERFORMANCE DATA AND OTHER DESCRIPTIVE DETAILS

- (a) Photographs, drawings, illustrations, weights, dimensions and any other particulars accompanying, associated with or given in a quotation, the descriptive literature or a catalogue, approximate the goods offered but may be subject to alteration. Seller will, if possible, provide reasonable notice to Buyer of any alteration.
- (b) Any performance data provided by Seller or manufacturer is an estimate only and should be construed accordingly.
- (c) Seller reserves the right to make changes in the construction and/or design of goods and notwithstanding any such changes Buyer shall accept in performance of any order of Seller's current corresponding standard models. Seller will, if possible, provide reasonable notice to Buyer of any changes in the construction and/or design of goods.

14. WARRANTY AND QUALITY

- (a) Certain legislation may imply warranties, terms or conditions or grant rights and remedies that cannot be excluded, restricted or modified. If those statutory provisions apply, to the extent to which Seller is entitled to do so, its liability is limited at its option to:
 - (i) The replacement or resupply of the goods; or
 - (ii) The repair of the goods; or
 - (iii) The payment of the cost of replacement of the goods; or
 - (iv) The payment of the cost of the repair of the goods.
- (b) Subject to clause 14(a), all goods supplied by Seller are covered by a written "Express Warranty" supplied with the goods when sold to Buyer. To the extent permitted by law, the Express Warranty is in substitution for all other terms, conditions, warranties and representations, express or implied by statute or otherwise.
- (c) Buyer shall immediately notify Seller in writing upon the discovery of any defect in the goods. Buyer shall not carry out any remedial work or installation to alleged defective goods without first obtaining the written consent of Seller to do so.
- (d) Buyer acknowledges that to the extent Seller has made any representation which is not otherwise expressly stated in these Terms and Conditions, Buyer has been provided with an opportunity to independently verify the accuracy of that representation.

15. SELLER'S CANCELLATION

- (a) Seller reserves the right immediately to cancel any contract for the supply of goods or services or suspend any such supply without incurring any liability to Buyer in any of the following circumstances:
 - (i) Buyer is overdue with any payment or otherwise in breach of these Terms and Conditions, and such breach has not been remedied by Buyer within 7 days of receiving notice from Seller of the breach, or the breach cannot be remedied;
 - (ii) Buyer becomes subject to an Insolvency Event; or
 - (iii) Contractual performance is delayed or prevented due to any cause or circumstances.
- (b) Cancellation by Seller under this clause shall be without prejudice to Seller's right to recover payment from Buyer for goods and services previously supplied.

16. BUYER'S CANCELLATION AND RETURNS

- (a) Buyer may return goods supplied for a credit against subsequent orders within (7) days of delivery provided the following conditions are satisfied:
 - (i) Seller's written approval has first been obtained and the invoice number and date have been quoted for reference,

- (ii) The goods are returned in their original condition; and
 - (iii) Buyer agrees to pay to Seller a handling charge equal to 10% of the price paid for the goods, in order to cover the reasonable additional costs incurred by Seller in accepting returns.
- (b) Buyer may cancel, in whole or in part, any contract for the supply of goods or service before supply has been made providing the following conditions are satisfied:
- (i) Seller's written approval has first been obtained; and
 - (ii) Buyer agrees to pay any cancellation charges, being a genuine pre-estimate of Seller's loss that Seller shall specify.

17. MANUFACTURERS' CHANGES

Where Seller is acting, as agent of a manufacturer or supplier, Seller shall not be liable for any alteration or variation in the goods made by the manufacturer or the supplier.

18. CONTINGENCIES AND GST

- (a) Any charge, duty, impost, sales tax or other expenditure which is not applicable at the date of Sales Invoice but which is subsequently levied upon Seller in relation to the Sales Invoice as a result of the introduction of any legislation, regulation or government policy, shall be to Buyer's account.
- (b) Buyer must pay to Seller any amount ("GST Amount") which is payable by Seller on account of a goods and services tax, value added tax or any other like tax ("GST") as a consequence of any supply made or deemed to be made or other matter or thing done under or in connection with these Terms and Conditions. The GST Amount must be calculated by multiplying the amount on which the GST is calculated by the prevailing rate of GST.
- (c) Buyer must pay any GST Amount at the same time and in the same manner as making payment of any consideration on which the GST Amount is calculated. If the GST Amount is not calculated on consideration, Buyer must pay the GST Amount within 7 days of receipt of a written demand from Seller. Buyer must pay any amount it is required to pay under this clause in full and without deduction, notwithstanding any entitlement that it may have to a credit or offset however arising.

19. FORCE MAJEURE

If in the performance or observance of its obligations Seller is prevented, restricted or affected by reason of force majeure including strike, lock out, industrial dispute, material shortage, stock shortage, breakdown of plant, transport or equipment or any other cause beyond the reasonable control of Seller, Seller may, in its absolute discretion give prompt notice of such cause to Buyer whereupon Seller is excused from such performance or observance to the extent of such prevention, restriction or affectation.

20. LIABILITY OF SELLER

Except as expressly provided herein and to the extent permitted at law:

- (a) Seller shall not be under any liability, whether in contract, tort (excluding negligence) or otherwise in respect of defects in goods delivered or for any injury, damage or loss resulting from such defects or from any work done in connection therewith except to the extent that the Australian Consumer Law, or any other statute applicable to these Terms and Conditions prevent the exclusion, restriction or modification of such terms and conditions.
- (b) Neither party shall be liable to the other for any loss of profit howsoever arising nor shall either party be under any liability whether in contract, tort or otherwise for any injury, damage, or loss whether consequential, special, indirect or otherwise save as is expressly provided in these Terms and Conditions.
- (c) Buyer indemnifies Seller against any liability to or action by a third party for infringement or alleged infringement of a patent, registered design, trademark or copyright in respect of goods manufactured to Buyer's specification.
- (d) Buyer indemnifies Seller against any liability for any loss or damage resulting from any act, default or omission of, or any representation made by Buyer or its servants or agents. Buyer's liability to Seller shall be reduced to the extent that Seller caused the loss or damage or Seller failed to take reasonable steps to mitigate the loss or damage.
- (e) All goods are supplied in accordance with usual industry standards and Seller shall not be liable to Buyer for the condition or quality of the goods that comply with these standards.

21. CONFIDENTIALITY

- (a) Except as required by law, these Terms and Conditions and subject to the PPSA, Seller and Buyer agree to treat these terms and conditions as confidential,
- (b) Seller and Buyer acknowledge and agree that sub-clauses 21(a), 21(c) and this sub-clause 21(b) constitute a confidentiality agreement pursuant to section 275(6) of the PPSA,
- (c) Neither Seller nor Buyer will disclose, send or make available any of the information referred to in section 275(1) of the PPSA to any person except as required by law, these terms and conditions and subject to the PPSA.

22. PERSONAL INFORMATION

- (a) Buyer must comply with all applicable privacy laws in collecting, using, and disclosing any Personal Information which Buyer discloses to Seller or receives from Seller under these Terms and Conditions, including that Buyer will provide any required collection notices (including on behalf of Seller upon request) and obtain any mandatory consents in order to do so.
- (b) Without limiting clause 22(a), Buyer must also:
 - (i) take all reasonable steps to ensure that such Personal Information is protected against misuse and loss, and from unauthorized access, modification or disclosure;
 - (ii) not use or disclose such Personal Information except to the extent necessary to perform Buyer's obligations under these Terms and Conditions or as expressly permitted by Seller or as required by law;
 - (iii) only permit Buyer personnel to access such Personal Information on a "need to know" basis and require all such personnel to comply with this clause;
 - (iv) comply with any reasonable directions of Seller in relation to the handling of Personal Information obtained from or on behalf of Seller; and
 - (v) if Buyer becomes aware or reasonably suspects that there has been any unauthorised access to, or disclosure or loss of, any Personal Information collected from or on behalf of, directly or indirectly, Seller, or handled in connection with these Terms and Conditions ("Data Breach"), Buyer must:
 - (A) immediately notify Seller of such Data Breach; and

- (B) promptly co-operate with Seller in any investigations or enquiries of the Data Breach by Seller or by a regulator or law enforcement agency.

23. REBATES

Where Seller agrees to pay to Buyer monthly, quarterly, annual or other similar rebates, advertising subsidies and the like in addition to agreed discounts "off invoice" those rebates, subsidies and the like are not payable by Seller if the invoices that earned or accrued the rebates, subsidies and the like are unpaid and/or not paid by Buyer. This specifically applies if Buyer is placed into administration, liquidation and receivership or any form of external control and management and the invoices that accrued the rebates, subsidies and the like are paid by the administrator, liquidator, receiver manager or external controller or manager as a result of any action, legal or otherwise, by Buyer against the administrator, liquidator or receiver manager to enforce any rights Seller may have in relation to the unpaid invoices/stock.

24. SET OFF

Where Seller owes monies to Buyer and Buyer owes monies to Seller and is in default or arrears to Seller, Seller reserves the right without notice to offset and apply any monies owed to Buyer against Buyer's account(s) or debt with Seller.

25. GENERAL

- (a) All clerical errors are subject to corrections and shall not bind Seller.
- (b) No employee of Seller is authorised to bind Seller unless Seller has given Buyer express written notice to that effect.
- (c) The invalidity or unenforceability of any provision of these Terms and Conditions shall not affect the validity or enforceability of the remaining provisions.
- (d) Seller's failure to enforce, at any time or any period of time, any term of any contract incorporating these Terms and Conditions shall not constitute waiver of such term and shall in no way affect its right to enforce it.
- (e) Headings are included for ease of reference and do not form parts of or affect the interpretation of these Terms & Conditions.
- (f) These Terms and Conditions bind Seller, Buyer and their respective successors and assigns and are effective from 1 September 2019.