

FUJITSU GENERAL (AUST.) PTY LIMITED
A.C.N. 001 229 554
TERMS AND CONDITIONS OF SALE
(Incorporating Personal Property Securities Act 2009 Legislation)

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,

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 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.

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 rate notified by National Australia Bank from time to time as being that Bank's indicator lending rate.

5. CLAIMS

Buyer shall inspect all goods supplied upon delivery. 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 published price list or by Seller's representatives are subject to change without notice and are not binding on Seller.
- (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 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.
- (f) All payments shall be made in Australian dollars without deduction or set off of any kind.

8. OWNERSHIP AND RISK

- (a) Risk in the goods will pass to the Buyer upon delivery to the Buyer's nominated point of delivery.
- (b) Ownership of any goods supplied by the Seller will not pass to the Buyer until all amounts owing by the Buyer to the Seller in respect of those goods and all other goods supplied by the Seller have been received by the Seller.
- (c) Until ownership passes to the Buyer, the goods supplied are held by the Buyer for the Seller as bailee and, if required, the Buyer will store the goods so that it is clear they belong to the Seller.
- (d) If the Buyer wishes to resell any goods before ownership passes, the Buyer may do so only by way of bona fide sale in the ordinary course of business and as the agent of the Seller, but the Buyer must not represent to any other person that the Buyer is acting for, or has any authority to bind, the Seller.
- (e) The Buyer will hold the proceeds of sale on trust for the Seller and the Buyer must account to the Seller for the proceeds of any sale of the goods.

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 7(e), delivery dates shall not be varied once they have been agreed, without Sellers prior written approval. Should the Seller agree to postpone delivery, the goods in question shall be stored at Buyer's risk and the Seller reserves the right to impose a weekly storage charge. Where delivery is postponed for more than 3 months the Seller at the Sellers discretion to reflect the Seller's current list price may increase any fixed contract prices.
- (g) Seller may at its discretion sell any goods subject to clause 7(g) still in its possession three (3) months after the mutually agreed deferred delivery date and seek damages for any loss incurred by the Seller as a result of the deferment in the delivery date.

10. RETENTION OF TITLE

- (a) Title to the goods supplied by the Seller to the Buyer shall remain with the Seller until the total amount due in respect of the goods and all monies owing to the Seller have been paid in full (the "Debts").
- (b) The Buyer shall have the right to resell goods, 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) The Buyer shall take custody of the goods as trustee, fiduciary agent and bailee for the Seller;
 - (ii) The Buyer shall keep the Seller's goods separate from any other goods and properly marked, stored, protected and insured.
 - (iii) The 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.
 - (iv) The Buyer expressly acknowledges that it is bound by fiduciary obligation created in the preceding paragraph and acknowledges that:
 - a) It must hold the Proceeds on trust for the Seller.
 - b) It must place the whole of the Proceeds in an account separate from its own moneys ('*the Proceeds Account*').
 - c) It must maintain the Proceeds Account separate from its own moneys at all times.
 - d) It must maintain proper records for the Proceeds Account.
 - e) It must not assign or encumber any book debts arising from sales made in circumstances set out in clauses 8. (c)(iii) (a) and (b) or do any other acts in derogation of the Seller's legal or beneficial interests.
 - f) It must account to the Seller on demand for all moneys standing to the credit of such account;
 - g) The Seller may appropriate payments as it thinks fit, notwithstanding any contrary appropriation by the Buyer;
 - h) For the purposes of identification of different consignments of goods and services purchased from the Seller and receipt of Proceeds, the Buyer agrees that the principle of "Last In, First Out" shall be applied to any items that cannot be distinguished.
 - i) The Seller may trace the *Proceeds* in equity.
- (d) On demand by the Seller the Buyer must assign to the Seller all book debts not exceeding the amount of the Debt at the date of demand.
- (e) The Seller may at any time, without notice to the Buyer and without prejudice to any other rights which it may have against the 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 the Buyer where the Seller reasonably believes the Goods may be stored, repossess the goods without liability for any damaged caused, and subsequently dispose of the goods at the Seller's discretion if:
 - (i) The Debts are not paid in accordance with these Terms and Conditions and any other contract or arrangement between the Seller and the Buyer
 - (ii) The Seller receives notice of or reasonably believes that:
 - a) A third person may attempt to levy execution against the goods;
 - b) The Buyer is insolvent (within the meaning of the *Corporations Law*) or bankrupt;
 - c) The 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) In after repossession under paragraph (d) the 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 the Seller are disposed of by the Buyer or an insurance claim is made in respect of them, the 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) The 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) The Buyer will execute documents and do such further acts as may be required by the Seller to register the security interest granted to the 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 the 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 the Seller to retain goods (section 135(2));
 - (xii) to object to any proposal of the 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) The Buyer further agrees that where the 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, the Buyer must not give to the Seller a written demand or allow any other person to give the Seller a written demand requiring the 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) The 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 the Seller under these Terms and Conditions.
- (g) The Buyer irrevocably grants to the 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 the Seller has cause to exercise any of the Seller's rights under section 123 and/or section 128 of the PPSA, and the Buyer shall indemnify the Seller from any claims made by any third party as a result of such exercise.

12. INSTALLATION

The Seller's Sale Invoice is made on a supply only basis. Installation and commissioning (if any) is at the expense of the Buyer unless otherwise specified in writing by the 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 without notice.
- (b) Any performance data provided by the Seller or manufacturer is an estimate only and should be construed accordingly.
- (c) The 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 the Seller's current corresponding standard models.
- (d) The Buyer expressly acknowledges and agrees that it has not relied upon any of the information provided by the Seller to the Buyer and that it understands that any of the information provided by the Seller in relation to the goods or services prior to the sale of the goods or services only approximates the goods or services and can only be treated as an estimate.

14. WARRANTY AND QUALITY

- (a) Certain legislation may imply warranties, terms or conditions that cannot be excluded, restricted or modified. If those statutory provisions apply, to the extent to which the 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 13(a), all goods supplied by the Seller are covered by a written "Express Warranty" supplied with the goods when sold to the 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) The Buyer shall immediately notify the Seller in writing upon the discovery of any defect in the goods. The Buyer shall not carry out any remedial work or installation to alleged defective goods without first obtaining the written consent of the Seller to do so.
- (d) The Buyer expressly acknowledges and agrees that it has not relied upon and the Seller is not liable for any advice given by the Seller, its agents or employees in relation to the suitability for any purpose of goods or materials supplied by the Seller.
- (e) The Buyer acknowledges that to the extent the Seller has made any representation which is not otherwise expressly stated in these Terms and Conditions, the Buyer has been provided with an opportunity to independently verify the accuracy of that representation.

15. SELLER'S CANCELLATION

- (a) The 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;
 - (ii) Buyer enters into bankruptcy, liquidation or a composition with its creditors, has a Receiver Manager or Administrator appointed over all or any part of its assets or becomes insolvent; or
 - (iii) Contractual performance is delayed or prevented due to any cause or circumstances.
- (b) Cancellation by the Seller under this clause shall be without prejudice to the 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) The 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 the Seller a handling charge equal to 10% of the price paid for the goods.
- (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) The Seller's written approval has first been obtained; and
 - (ii) Buyer agrees to pay any cancellation charges, being a genuine pre-estimate of the Seller's loss that the Seller shall specify.

17. MANUFACTURERS' CHANGES

Where the Seller is acting, as agent of a manufacturer or supplier, the 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 the Seller in relation to the Sales Invoice as a result of the introduction of any legislation, regulation or government policy, shall be to the Buyer's account.
- (b) The Buyer must pay to the Seller any amount ("GST Amount") which is payable by the 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) The 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, the Buyer must pay the GST Amount within 7 days of receipt of a written demand from the Seller. The 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 the 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 the Seller, the Seller may, in its absolute discretion give prompt notice of such cause to the Buyer whereupon the 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) The Seller shall not be under any liability, whether in contract, tort 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 any statute applicable to these Terms and Conditions prevent the exclusion, restriction or modification of such terms and conditions.
- (b) The Seller shall not be liable to the Buyer for any loss of profit howsoever arising nor shall the Seller 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) The Buyer indemnifies the 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 the Buyer's specification.
- (d) The Buyer indemnifies the Seller against any liability for any direct, indirect or consequential injury, loss or damage arising out of any act, default or omission of, or any representation made by the Buyer or its servants or agents.
- (e) All goods are supplied in accordance with usual industry standards and the Seller shall not be liable to the 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, the Seller and the Buyer agree to treat these terms and conditions as confidential,
- (b) The Seller and the 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 the Seller nor the 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. REBATES

Where the Seller agrees to pay to the 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 the Seller if the invoices that earned or accrued the rebates, subsidies and the like are unpaid and/or not paid by the Buyer. This specifically applies if the 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 the Buyer against the Administrator, Liquidator or Receiver Manager to enforce any rights the Seller may have in relation to the unpaid invoices/stock.

23. SET OFF

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

24. GENERAL

- (a) All clerical errors are subject to corrections and shall not bind the Seller.
- (b) No employee of the Seller is authorised to bind the Seller unless the 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) The 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 the Seller, Buyer and their respective successors and assigns and are effective from the 1st October, 2011.