

## 1. Scope and validity

- 1.1 These General Terms of Business (GTB) regulate the entering into, content and execution of contracts, specifically for the following deliverables:
- Product business, specifically the purchase of hardware products and acquisition of standard software (licenses); and
  - Services, specifically services and support in the IT field, warranty services, repair services, replacement deliveries and supply of temporary staff.
- 1.2 These GTB supplement the contract between the customer and Fujitsu Technology Solutions AG ("referred to using "Fujitsu").
- 1.3 Any departures from these GTB must be expressly designated as such and must be mentioned in the contract or the Fujitsu order confirmation to be valid.
- 1.4 In all cases, rights are reserved for the following: product descriptions, service specifications, other specifications, and other pertinent regulations of Fujitsu, as well as the delivery and licensing conditions of third parties for products and standard software programmes sold by Fujitsu (including associated documentation).

## 2. Offer and contract

- 2.1 Unless otherwise expressly designated, the offer of Fujitsu is nonbinding, regardless of its type and form (in writing, electronic, on our homepage, etc.).
- 2.2 The information in the Fujitsu advertising brochures, flyers, documents, presentations, fact sheets, plans, design concepts, catalogues, documentation and the like is nonbinding and shall not in any manner constitute assurances or promises. This does not apply to characteristics expressly designated as assurances in the contract or order confirmation of Fujitsu.
- 2.3 Fujitsu may reject a customer order without providing reasons. If Fujitsu issues an order confirmation, it shall accept the order as binding based on these GTB and the provisions of the order confirmation.
- 2.4 The type, scope, characteristics, performance and technical qualities of the products and services shall correspond to the offer made by Fujitsu offer and shall be deemed conclusive.

## 3. Deliverables

- 3.1 Fujitsu will provide the customer with the title to the delivered hardware (exclusive of accompanying software).
- 3.2 Fujitsu will provide the customer with the usage rights for the delivered standard software. The usage rights shall be based on the rules set forth in the third-party manufacturer's licensing provisions. If no usage rights have been agreed in writing, the customer shall receive a nonexclusive, nontransferable, temporary, revocable right to personal use in return for payment.

These usage rights shall also apply to the documentation included in the delivery. No other use is permitted.

- 3.3 Whenever temporary staff are placed, Fujitsu shall arrange for the necessary permits and contracts for the deployed staff.
- 3.4 Fujitsu will deliver the agreed products to the customer along with documentation. The provision of an access option (e.g., for downloading the standard software via the internet or viewing the documents via a link designated by Fujitsu) shall be equated with delivery.
- 3.5 Unless otherwise agreed in writing, no ownership of standard software, work results, documentation or other deliverables will be transferred to the customer. The customer shall only receive a permanent, irrevocable, nontransferable, nonlicensable right to make personal use for the designated purpose any work results, documents and other deliverables developed specifically for the customer. Any other use, especially duplication, translation, adaptation or sharing with third parties shall require the prior written consent of Fujitsu.
- 3.6 Any noncontractual use of the deliveries and services (especially breaching the ownership rights or intellectual property rights of Fujitsu or of third parties, any exceeding or ignoring the usage restrictions of Fujitsu or of third party manufacturers, any unauthorised decompilation, reverse engineering, modification, adaptation, translation, or transfer to third parties, or any other action which would tend in any way to impair or breach the intellectual property rights of Fujitsu or of third parties) may lead to the immediate revocation or suspension of usage rights, without any obligation for Fujitsu to compensate for costs or damages. Fujitsu reserves its right to claim compensation for loss and damages.

## 4. Prices

- 4.1 The remuneration that Fujitsu receives shall be disclosed in the price quote, the order confirmation or the contract. The customer undertakes to pay that compensation when due.
- 4.2 The product price does not include costs for installation, implementation, startup, instructions, etc. Fujitsu may offer them as separate services and they must be paid for separately by the customer at cost.
- 4.3 Unless otherwise agreed, the prices are in Swiss francs and do not include VAT or other levies.
- 4.4 Travel time shall be deemed working time. Fujitsu will bill for travel expenses, out-of-pocket expenses, costs, fees and charges in accordance with applicable tariffs, or the customer will pay for them according to the actual expenses incurred.
- 4.5 Fujitsu may at any time and at its discretion demand that the customer make a prepayment or initial payment or furnish a bond (such as an independent guarantee through a first-class bank) and may withhold delivery or performance of services until such requirement is met, without being held in default.

## 5. Price adjustments

- 5.1 If any change takes place in the circumstances on which the prices are based between the time of the offer and the agreed delivery date, Fujitsu may adjust the prices and conditions accordingly; this especially applies to the currency situation, taxes, levies, fees, customs duties, labour costs, surcharges, material shortages, and price fluctuations for raw materials.
- 5.2 Fujitsu may adjust prices for recurring services (customer support and financing services) in line with changes in the cost situation, in each case on the first day of any calendar month. Those adjustments will be published on the Fujitsu website ([www.fujitsu.com/ch](http://www.fujitsu.com/ch)) or in another suitable form.
- 5.3 The customer may be invoiced at any time for price markups for third-party products and services that constitute the subject matter of this contract.
- 5.4 The customer shall compensate any additional or extra services according to the efforts and expenditure incurred by Fujitsu and based on the hourly and daily rates applicable at that time.

## 6. Terms of payment

- 6.1 Unless otherwise agreed, the invoices from Fujitsu are due for payment within 30 days from the invoicing date, without a discount or any other deductions. The payment is deemed made as soon as the full amount is credited to the Fujitsu account and is available to it for free disposal.
- 6.2 Set-off against counterclaims is prohibited unless Fujitsu has acknowledged those counterclaims in writing in advance.
- 6.3 If the customer fails to meet the agreed payment deadlines, the customer shall pay default interest of 8% a year, beginning on the first day of the delay, with no warning being necessary.
- 6.4 If the customer defaults on a payment, Fujitsu may stop rendering services, after setting a short grace period, and refuse to resume rendering them until all outstanding receivables (sum of unpaid invoices, default interest, dunning and debt enforcement costs, collection costs, etc.) have been paid.
- 6.5 The customer will not acquire title to the delivered hardware, nor the limited usage rights to the standard software, documentation, work results, documents, etc. (as described above in clause 3), until all agreed remuneration has been paid in full.

## 7. Reservation of title

- 7.1 By placing an order, the customer authorises Fujitsu to have a reservation of title entered at any time at the place where the item is kept. The customer will make reasonable efforts to support Fujitsu, and in particular will deliver correct information about the place where the item is kept, and about serial numbers, etc., which is needed for the entry.

- 7.2 The customer will maintain the delivered objects at its own expense as long as their title is reserved, and will insure them to our benefit against theft, damage, loss, natural hazards, etc. The customer will not take any actions which could impair Fujitsu's claim to ownership, especially selling, encumbering or transfer of the item. No manufacturer's labels on the item may be removed or made illegible.

## 8. Transfer of rights and obligations

- 8.1 Use and risk will be transferred to the customer on delivery.
- 8.2 If any hardware or standard software delivered by Fujitsu are subject to export restrictions, the customer will comply with those restrictions in accordance with the manufacturer's specifications.

## 9. Delivery periods and default

- 9.1 All deadline information, delivery periods and fulfilment dates are considered nonbinding guidelines for Fujitsu. Fujitsu shall enter default only if the customer has rejected the delivery or fulfilment in writing and the reasonable grace period for fulfilment is not met due to the sole culpability of Fujitsu.
- 9.2 Accordingly, Fujitsu will not be deemed in default in the event of these and other circumstances:
  - a) If the information that Fujitsu needs for contract execution is false, incomplete, or provided late, or if the customer demands subsequent changes or additions, thereby delaying the deliveries or services;
  - b) if hindrances occur that Fujitsu cannot prevent despite using due diligence, whether they occur with Fujitsu, the customer, or a third party. Such hindrances include, without limitation, official actions or omissions, natural incidents, epidemics, labour disputes, accidents and downtime;
  - c) if the customer or a third party commissioned by the customer is in arrears on the work or services to be performed, or defaults on fulfilment of contractual obligations;
  - d) if the customer fails to receive the delivery at the agreed time.

## 10. Delay in acceptance

- 10.1 If the customer fails to accept the properly offered service, Fujitsu may, after setting a brief grace period, either:
  - a) continue to insist on contract performance and demand the agreed remuneration to that end, but conclusively dispense with the further rendering of services, or
  - b) withdraw from the contract, demanding damage compensation and the return of all delivered products. Fifty percent of the contract value is agreed as lump-sum damage compensation. That lump sum will become immediately due and payable to Fujitsu.

10.2 If Fujitsu sustains further damages, it reserves the right to assert claim for them.

## 11. Inspection and acceptance

11.1 The customer (or its vicarious agents) will receive the delivery or services and conduct inspection without undue delay. Any defects that are detected must be notified in writing without undue delay, including specific indications and detailed descriptions. If the customer fails to comply with the duty of notification, all of the preceding statutory and contractual warranty rights will be forfeited.

11.2 Defects which the customer could have recognised if performing a diligent inspection are excluded from warranty claims.

11.3 If the customer makes productive use of the deliveries or services, in part or in full, the performance as a whole shall be deemed accepted as free from defects.

11.4 By paying invoices from Fujitsu without reservation, the customer acknowledges that the deliveries and services invoiced by Fujitsu were rendered without defects.

11.5 Performance rendered under a contract for work and services will be accepted only if the parties have agreed to this in writing. In this case, the parties will have to have at least agreed, in writing and in advance, on the classification of defects and on the acceptance procedure. The services of Fujitsu are not subject to acceptance.

## 12. Duties to cooperate

12.1 The customer shall take all preparatory and cooperative actions so that Fujitsu will be able to render the owed deliveries and services. The customer shall provide Fujitsu, or third parties appointed by Fujitsu, with all information, data, papers, documents, etc. which are necessary for, promote, or facilitate performance of the contract. The customer shall also take all preparatory and cooperative actions communicated to it by Fujitsu or its subcontractors. These can entail items or services that the customer provides, such as provision of workspace, systems, hardware, components, software and interface information, as well as involvement of specialised third parties.

12.2 The customer shall designate expert contact partners who are authorised to make decisions, and shall make the necessary decisions, appoint representatives, and provide the instruction, education and training of its employees, executive bodies and auxiliary personnel.

12.3 The customer will be responsible for providing adequate personnel, suitable infrastructure at the place of delivery or performance, auxiliary materials, tools, consumables, machines, lockable, lit, heated and clean working and storage rooms, as well as the entry road, access and admission to the place of delivery or performance and to buildings, rooms, machines and systems.

12.4 The customer is solely competent and responsible for keeping, providing, migrating, storing, backing up, entering, and processing data, the safe retention of data, etc.

12.5 The customer acknowledges and accepts that Fujitsu, or third parties commissioned by Fujitsu, can perform certain activities or services remotely. To that end, the customer shall bring about all necessary conditions, at its own expense, to guarantee access to facilities, systems, documents, information, data, software, etc. without delay and without additional cost or expense for Fujitsu.

## 13. Nondisclosure

13.1 The contract partners are obligated to keep secret all facts, plans, data, documents, documentation, business and trade secrets, methods, developments and other information of which they become aware through the business relationship and which are neither public nor generally accessible. Such information shall not be disclosed to third parties or used other than for its intended purposes.

13.2 Nondisclosure expressly applies to all software programmes, deliveries, work results, and documentation delivered or created by Fujitsu and information to that end. The customer in particular may not modify, copy, adapt, translate, decompile or disassemble the intellectual property rights, work results, deliveries, documentation, etc., which Fujitsu delivers or sells, reconstruct the same using reverse engineering, or create, transmit, disclose or make accessible any work derived therefrom.

13.3 The obligations contained in these GTB must be imposed in writing on any third parties who are engaged. In cases of doubt, all facts, information, data and perceptions shall be deemed confidential. The nondisclosure obligations exist before entering into the contract and will survive the contractual relationship or performance of the agreed service. Statutory clarification obligations are reserved, as well as the forwarding of such information to third parties engaged by Fujitsu for performance of the contract.

13.4 The parties undertake to explain the nondisclosure obligations to their employees, executive bodies, third parties and auxiliary personnel, and will obligate them to nondisclosure in writing using provisions that are at least equivalent.

13.5 The customer shall inform Fujitsu in writing about further nondisclosure and security provisions in advance (such as special requirements that apply in particular cantons).

13.6 The inspections by the customer (or third party commissioned by the customer) of provision and rendering of services by Fujitsu shall be dependent of the conclusion of a separate written agreement (known as an "audit agreement"). This does not apply to the legally stipulated audit rights of officials and supervisory authorities. The customer shall bear all costs related to an audit.

## 14. Data privacy

- 14.1 The parties undertake to comply with the provisions of applicable data privacy law at all times, especially the EU's GDPR and local data privacy laws.
- 14.2 Data processing must take place in accordance with the general principles of data protection, especially the principle of legality, proportionality, intended purpose, data economy, being bound by instructions and, in general, in accordance with the principle of good faith.
- 14.3 Transfer of data to or processing of data by third parties is permitted only if the other party has given its prior written consent (provided such consent is necessary under statutory provisions). The customer acknowledges that none of the Fujitsu group companies are deemed third parties.
- 14.4 The controller is responsible for the legality, compatibility with intended purpose, content and scope of the data which that party transfers or makes available to the other party as part of contract performance.
- 14.5 The parties are responsible for protecting the transferred data in the respective areas of responsibility and will maintain, and periodically test and improve, adequate organisational and technical measures to that end.
- 14.6 Any testing services performed by Fujitsu to ensure that the customer (or third party) is complying with data protection regulations must be compensated for separately.

## 15. Warranty

- 15.1 Fujitsu guarantees that the products and services feature the agreed characteristics.
- 15.2 If there is a defect, the customer may demand a repair or replacement only for those parts which are demonstrably defective. Fujitsu will cure any defect in its own products within a reasonable period, by repair, replacement delivery or provision of an update (at its own discretion). For newly delivered or repaired parts, only the time remaining from the original warranty period will apply. All other warranty rights for services and deliveries are excluded. If components supplied by the customer are defective, their ownership shall be transferred to Fujitsu.
- 15.3 Unless expressly agreed otherwise, the warranty period for defects in Fujitsu products is 24 months if the customer is a natural person and six months if the customer is a legal entity or partnership. The right is reserved to specify other warranty periods and conditions in third-party delivery and licensing conditions. The provisions of the above clause 11 are also reserved.
- 15.4 In any case, the warranty does not apply to damages, malfunctions and defects in deliveries or services which arise due to the following: natural wear and tear; defective maintenance, care or cleaning; failure to follow manufacturer's instructions or operating manuals;

vandalism; improper, wrongful or noncontractual use; failure to observe safety warnings; incorrect storage; force majeure; third-party intervention; manipulation, theft, or damage; impairments through environmental influences; unauthorised intervention, modifications, additions or adjustments; combination with products and services not delivered by Fujitsu; and use of unsuitable equipment or infrastructure by the customer (or third party commissioned by the customer). In all cases, the warranty provided by Fujitsu excludes anything provided by the customer and the assurance of the customer that of required conditions are met (cf. in particular clause 12 above). Any warranty for services rendered by Fujitsu (or third parties commissioned by Fujitsu) is also excluded.

- 15.5 The warranty claims of the customer for third-party products and services shall be based exclusively on the arrangements of the relevant manufacturer. Fujitsu cedes to the customer the warranty claims arising from the manufacturer's provisions for the products and standard software, as permitted. The customer can then assert the warranty claims within the scope of the manufacturer's terms and conditions at its own expense and risk. If the warranty rights cannot be transferred, the defect rights listed in these GTB will be conclusively applicable. Further claims against Fujitsu are excluded.

## 16. Liability

- 16.1 Each party is liable for damages caused by it or third parties engaged by it, unless it is able to prove that neither it nor those third parties are at fault.
- 16.2 Liability for personal injury, breach of intellectual property rights, intent and gross negligence is unlimited.
- 16.3 In the event of minor negligence, Fujitsu will be liable for direct damages up to a maximum of 30% of the remuneration actually paid by the customer (excluding VAT).
- 16.4 Liability of Fujitsu for indirect or consequential damages is excluded. Indirect damages include damages from data loss, foregone profits, foregone revenue, unrealised savings, additional expenses and costs, damages suffered by third parties, reputational damage, default damages, pecuniary damages of all types, etc.
- 16.5 Liability for third-party products is based exclusively on the terms of the manufacturer in question. Fujitsu refuses liability to the full extent possible for any third-party products.

## 17. Force majeure

- 17.1 Fujitsu shall not be liable for deliveries or deliverables if their rendering is interrupted, restricted or prevented by force majeure. Force majeure includes specifically natural incidents (such as lightning, inclement weather, hail, fire, power outages, floods, landslides, avalanches, storms and earthquakes), the effects of

animals, events of war, riots, unforeseeable official restrictions, and the loss of transport, communication or energy systems, both in and outside of Switzerland.

- 17.2 In such cases, Fujitsu will suspend performance of the contract until the cause of the force majeure no longer exists at all. Fujitsu will not be liable for any damages sustained by the customer due to force majeure. If the force majeure lasts longer than two (2) weeks without interruption, Fujitsu may effect extraordinary termination of the contract, the order in question, or both, effective immediately, without obligation to compensate for damages.

## 18. Engagement of third parties

- 18.1 At Fujitsu's discretion, services may be rendered by engaging third parties, such as subcontractors, sub-suppliers, or sub-providers.
- 18.2 The affiliates of Fujitsu around the world are not deemed third parties for the purposes of these GTB, regardless of the amount of their participation or voting rights; this especially applies to parent, subsidiary and associated companies.

## 19. Place of performance

- 19.1 Unless otherwise agreed in writing, the place of performance for deliveries is the place in Switzerland where the products are delivered; for services, it is our registered office.
- 19.2 Unless otherwise specified in the price quote or order confirmation, all deliveries will be made EXW (Incoterms 2010).

## 20. Contract components and hierarchy

If there are contradictions between provisions governing the same subject matter, the provisions of these GTB will take precedence over the order confirmation, the price quote, the product descriptions, service specifications, other specifications, warranty provisions and any other Fujitsu documents.

## 21. Contract amendments

- 21.1 The customer may request in writing that the contract or orders be amended. Fujitsu will notify within a reasonable period and in a suitable form whether such a change is possible, and what effects it would have on remuneration, deadlines, and other contract items. The customer has no claim to any such amendment being realised.
- 21.2 Fujitsu cannot change orders that it is already processing.

## 22. Termination

- 22.1 The customer may not revoke orders once received by Fujitsu. Compulsory statutory provisions on consumers' right of revocation are reserved.

- 22.2 Either party may terminate contracts obligating Fujitsu to render services during a certain period; such termination must be made in writing with 3 (three) months' notice effective from the end of the calendar quarter.

- 22.3 Fujitsu will not reimburse the customer for remuneration already paid. When the contractual relationship ends, all of claims of Fujitsu will become immediately due and payable by the customer.

- 22.4 Extraordinary termination without notice is permitted if the terminating party cannot reasonably be expected to continue with the contract, due to important reasons brought about by the other party. A default in payment by more than 30 days from the initial due date constitutes an important reason.

- 22.5 If bankruptcy or insolvency proceedings are initiated against one of the parties, the other party may also dissolve the contract without notice.

## 23. Assignment

- 23.1 A contract or order may only be transferred or assigned with legal validity to a third party in full or in part (meaning individual rights and obligations thereunder) if Fujitsu has given prior written consent.

- 23.2 Fujitsu shall not need the consent of the customer to transfer or assign a contract or order (or individual rights and obligations thereunder) to another company. In this case, Fujitsu will notify the customer in a suitable form of the change in party.

## 24. Severability clause

Should individual provisions of these GTB be found invalid or unenforceable, now or in the future, the remaining provisions shall be unaffected. The parties undertake to replace invalid provisions with new, valid provisions which have the same effect.

## 25. Written form

Amendments to these GTB, including any waiver of this requirement for written form, shall require the written form to be valid. Oral arrangements must be confirmed in writing.

## 26. Applicable law and place of jurisdiction

- 26.1 The contractual relationship is subject exclusively to Swiss law.

- 26.2 Neither the provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG; the Vienna Convention) nor those of conflict-of-law rules will apply.

- 26.3 The place of jurisdiction will be the registered office of Fujitsu unless compulsory provisions stipulate otherwise.