

# General Terms and Conditions for Hardware and Software Support Services of Fujitsu

## 1 General

1.1 Fujitsu shall provide services exclusively for products as listed in the service document or as registered upon service activation and solely for components/products that have been released by the manufacturer. Customer shall be entitled to services within the territorial limits specified in the service data sheets. The services extend to exchange units provided to customer in the course of a service incident however without the original service period being prolonged hereby.

1.2 All underlying service data sheets and technical appendices for Fujitsu service products as well as any other standardised additional terms for Fujitsu Hardware and Software Support Services may be viewed online at <http://www.fujitsu.com/at/services/support/> or at Fujitsu sales partners upon request.

## 2 Service/Service delivery

2.1 The scope of Fujitsu Hardware and Software Support Services shall follow from Fujitsu service data sheets, their technical appendices as well as any additional terms as applicable for the agreed service. The obligation to provide services shall be limited to the restoration of the functionality of the product at the time of the original delivery. Service delivery shall be based on the following terms as well as, where applicable, on the additional terms for special service elements.

2.2 Product errors and service incidents, occurring prior to activation or the conclusion of the agreement do not fall within the scope of Fujitsu Hardware and Software Support Services. In such cases, only the product and country-specific manufacturer warranty terms shall apply.

2.3 The services shall be provided by Fujitsu, or on behalf of Fujitsu by an authorized service partner or Fujitsu Repair Center, and within the service times as set out in the respective service data sheet. Fujitsu reserves the right to provide remote support in English language.

2.4 If and insofar as possible, services shall be carried out via telecommunication (telephone, Internet, remote service tools). The means for remote access shall be provided as per the product-specific service data sheet. Fujitsu reserves the right to decide if and to what extent services have to be performed on site.

2.5 The services shall not include the delivery and exchange of accessories (e.g. data media), consumable parts (e.g. rechargeable batteries, batteries, battery backup units (BBU), print heads, screen/picture tubes) and other accessories, nor the incident-independent provision and installation of BIOS drivers/operating software or firmware updates/upgrades. Unless explicitly agreed otherwise, regular maintenance measures must

be carried out by the customer as specified in the data sheet or operating instructions and shall not be part of the services.

2.6 The scope of service shall exclude the elimination of product errors and damages, which have been caused by improper handling, dirt, extreme environmental conditions (excess voltage, magnetic fields, etc.), Act of God (lightning, floods, war, etc.), use of force, customer's own attempts at repairs or attempts at repairs by third parties, changes to the original product or other circumstances for which the customer is liable. This shall also apply for product errors and damage which have been caused by the fact that the product entitled to services was not used or installed according to the provisions of the corresponding product-specific documentation, in particular the safety regulations, instructions or operating instructions issued by Fujitsu.

2.7 Fujitsu shall not provide support for any products or components from other manufacturers, unless such products or components were included in the delivery (scope) of the original product entitled to service and/or are explicitly included in the scope of services by the service description.

2.8 Extensions or changes to the scope of services or the service terms shall only be valid if they have been documented explicitly and in writing in the respective service document or offer, and confirmed in writing by Fujitsu. Fujitsu shall only be bound to any conflicting or supplementary general business terms and conditions of the customer to the extent that such terms are in compliance with the terms set forth below or if Fujitsu has explicitly agreed to such terms in writing.

2.9 For the duration of this service agreement, the customer must have all service and other work relating to the products (e.g. extensions) exclusively performed by Fujitsu or with the approval of Fujitsu.

2.10 The spare parts and replacement devices used for repairs by Fujitsu during the service agreement are new, or as good as new, original spare parts or devices. Unless otherwise agreed, the faulty parts/devices removed from a product during a service case shall become the property of Fujitsu and are, inasmuch as they cannot be collected by Fujitsu during the service assignment, to be kept for testing purposes by the customer for at least 60 days after the service assignment.

2.11 If the purchased service includes the right to retain the hard disk (option "HDD Retention"), the faulty hard disk shall, if replaced in the event of a proven malfunction/fault, remain property of the customer.

2.12 Services and spare part deliveries that are offered by Fujitsu as standard, but lie outside the scope of services due as part of the specifically purchased Fujitsu service products, shall be provided at the customer's

request and charged at the time of the repair or exchange according to the valid Fujitsu service/spare part list prices.

### 3 Service period, dates

3.1 Unless otherwise described in the respective service data sheets, the term for Fujitsu Hardware and Software Support Services shall begin at the time agreed in the service document or agreement. If no calendar-based deadline for the expiry of the service period has been agreed, the respective service agreement may be terminated by either party with three months' notice to the end of a calendar month, but to the end of the minimum contract period agreed in the respective service document at the earliest.

3.2 If there is an option for renewal according to the service data sheet or the automatic renewal of the agreement is foreseen, the agreement shall at the latest end with the end-of-service for the product entitled to services. Fujitsu shall inform the customer of the product-specific end-of-service date with reasonable advance notice.

3.3 The parties' right to terminate the service agreement for legitimate cause shall not be affected.

### 4 Supplementary Service Terms governing Software Support Services

4.1 No software support within the framework of hardware service products:

4.1.1 Within the framework of hardware service products, the services for the software products supplied with the hardware (if included in the delivery scope) are restricted to the exchange of physically defective or non-functional data media (diskettes, CDs, DVDs, tapes) during the first three months of delivery/purchase date. Driver and firmware updates that are available from Fujitsu can also be downloaded via the Internet addresses specified in the documentation or provided on a product-specific basis for the terminals at the discretion of Fujitsu.

4.2 Scope of software support within the framework of software service products:

4.2.1 The service obligation relating to software shall exclusively cover the software version specified in the respective service document, or a new version of such software taken over by the customer, and - within such version - shall exclusively cover the latest patches and updates taken over by the customer, unless otherwise described in the service data sheet or the respective technical appendix. Fujitsu shall provide its services for older versions and patches and updates exclusively on the basis of Fujitsu's or the software manufacturer's valid release policy relating to the respective software.

4.2.2 The specific scope of the software support services due shall be primarily based on the valid service data sheet for the software product entitled to services, including the software-specific technical appendix.

4.2.3 Within the meaning of these terms and conditions a service case shall exist if deviations from the program specification defined in the software product data sheet occur in the software product entitled to services. To the extent that the customer has extended the software beyond the interfaces determined in the release notice for this purpose, the obligation to provide services shall only be up to the interface. The obligation to provide services shall not extend to the remedying of non-reproducible errors.

4.2.4 The service obligation within the context of the service agreement shall also explicitly exclude the maintenance or recovery of the interrupt-free or error-free functioning of the software, individual application programming services, IT consulting, installation, performance enhancement, system optimization, the provision of drivers for peripheral units, and the backup and recovery of customer data or software.

4.2.5 With regard to software or software components not acquired through Fujitsu, but which are nevertheless part of the service agreement as specified in the service document, the customer shall notify Fujitsu - as may be required for Fujitsu's service performance and with due time in advance - of the scope of the customer's rights to use and - insofar as required - also of the scope of the adaptation rights of the customer with regard to the software specified in the relevant agreement. Customer shall ensure that he has acquired the license rights as necessary for Fujitsu to provide its services. Fujitsu shall be exempt from its duty of performance as long as and to the extent that Fujitsu is prevented from providing its services due to a lack of the necessary license rights provided that the responsibility for such lack of license is with the Customer.

4.2.6 In order to prevent or remedy incidents, Fujitsu reserves the right to request that the customer use any available patches, update or program improvements and/or new versions of the software program, even if those should be available on an incident/error independent basis only. This shall particularly apply if a software manufacturer no longer supplies patches or updates for a specific release version that has been agreed with the customer or the manufacturer announces the "end of life" for such release or version used on the customer's IT equipment. The customer is obliged to adopt any generally available new software version, provided that the scope of functions as agreed and used by the customer is maintained, and provided that it is not unreasonable for the customer to adopt the new software version. If the adopting of such an upgrade or such a new version is not included in the original scope of service, the customer shall be obliged to bear any additional or increased license and service charges that may be associated with the upgrade or the new version. If the customer refuses to do so, Fujitsu shall be deemed legitimately entitled to terminate the service agreement.

4.2.7 If the customer is unable, due to software error, to process tasks and if the processing of such tasks cannot be postponed until the new patches and up-

dates are made available, Fujitsu shall provide an interim solution in order to perform a workaround for the error, provided that this is possible with reasonable time and effort. If workarounds for the errors cannot be created with reasonable effort, or if such workarounds are not available, particularly in the case of software products from third parties, Fujitsu shall endeavor to obtain a program fix from the manufacturer of the respective software, to the extent that this is reasonable, on a best endeavors basis.

- 4.2.8 The installation of the program fixes or patches and updates delivered shall be carried out by the customer, unless stipulated otherwise in the agreement. If the patches, updates, upgrades or new versions delivered as part of service delivery require modifications or extensions to the underlying hardware infrastructure for technical reasons, the customer shall be obliged to procure the necessary hardware at their own expense. If the customer refuses to do so, Fujitsu shall be legitimately entitled to terminate the service agreement if maintaining the service for the previous release version were to be associated with unreasonable expenditure or costs for Fujitsu. Any additional costs in this respect shall be borne by the customer.
- 4.2.9 If the customer receives as a service to a software product, a fix /patch and/or update, the provisions of the underlying license /licensing agreement for the software product shall be valid for the use of this fix /patch or update, unless explicitly agreed otherwise.
- 4.2.10 All program fixes, patches and updates delivered as part of the software support services shall, where appropriate, have been submitted to a current anti-virus program at a reasonable time prior to delivery to the customer. This aside, the liability for viruses or any other detrimental software elements shall be excluded, unless Fujitsu has actively introduced them to the respective data, media, patches and updates or program fixes purposely, intentionally or carelessly.
- 4.2.11 The customer's entitlement with regard to the services shall lapse if and to the extent that the customer does not use the software entitled to services and as specified in the system agreement or the offer within the agreed system environment, or if the customer uses such software contrary to the relevant rights of use as stipulated in the system agreement. This aside, the customer shall not be entitled to the provision of the services if and to the extent that the customer has modified the software, or the software has been changed by any third parties not authorized by Fujitsu, unless the customer is able to demonstrate by means of a test run of the unmodified software product that the modification is not directly attributable to the error which has occurred.

## 5 Supplementary Terms governing Solution Infrastructure Support Services

5.1 The proactive services named within the framework of the Solution Infrastructure Support Services are pre-

ventive support services for the early advance detection of any system faults to the system entitled to services. In this regard, Fujitsu shall provide the proactive service described, but the general responsibility for current and uninterrupted system operations shall remain with the customer. Other than the elimination of an incident in accordance with the service data sheet, Fujitsu shall not assume any responsibility for any issue in conjunction with downtimes of the system entitled to services, which may have occurred despite the preventive support services provided.

5.2 Unless otherwise described in the respective service data sheet or the technical appendix, the service obligation shall not include any support in the form of product development, application programming, IT consulting, installation, performance enhancement, system optimization or the backup and recovery of customer data or software.

## 6 Duties to Cooperate / Coordination in case of service incidents

6.1 The proper provision of services by Fujitsu and/or its service partners or Repair Center shall be subject to the proper fulfillment of the duties to cooperate of the person entitled to services as defined in the service data sheets, these terms and conditions and in the additional agreements. If and to the extent that the customer fails to fulfill its duties to cooperate despite the reasonableness of the duty to cooperate concerned, Fujitsu shall be relieved from the provision of its services for as long as the customer fails to fulfill its duty to cooperate. The customer shall pay for any additional costs or damage caused by the customer's failure to comply with its duty to cooperate. Any additionally required services in this respect on the part of Fujitsu shall be charged according to the Fujitsu conditions and prices valid at this time. Fujitsu shall be entitled to terminate the agreement without notice in those cases where the customer has committed a significant or repeated breach of its duties to cooperate.

6.2 Customer's duties to cooperate as part of the services covered by these terms and conditions are in particular:

6.2.1 The customer shall give Fujitsu the name of a competent employee, who can provide the information required to implement this agreement and either take or quickly bring about decisions.

6.2.2 The customer shall report any faults and errors that occur without delay. During error elimination the customer shall observe any advice and technical instructions received from Fujitsu employees. Furthermore, the customer shall take any measures facilitating the diagnosis of any error and causes, to the extent that this is reasonable, and shall shorten any re-runs for the purpose of determining the error in question.

6.2.3 The customer shall make the necessary documents, information or data required for service delivery available to Fujitsu and/or its service partners. This duty to cooperate shall particularly cover notification in good time and without delay of the ID/serial number of the contracted hardware and software products. Notification of the ID/serial number or another unique means of product identification shall be

a mandatory prerequisite for the delivery of the agreed services.

- 6.2.4 If required for specific service delivery, the customer shall ensure free access to the installation/operating location of the devices or software products entitled to services, as well as the room required to carry out repairs at the installation location. The customer shall also ensure that technical installations (in particular, telephone and power connections) required to carry out maintenance services are made available in good working order at its own expense and to an appropriate extent.
- 6.2.5 In case of onsite technical support, Customer has to ensure that the working environment for Fujitsu's and Fujitsu subcontractors' technical staff complies with any and all applicable occupational health and safety regulations (e.g. workspace with proper ventilation, free from hazardous substances, legally required oxygen concentration levels, acceptable sound levels, ergonomically correct work stations, etc.).
- 6.2.6 Prior to each service assignment, especially before parts or devices are replaced, the customer shall be obliged to back up any programs and data and to remove any data media, changes and additions. The correct data backup shall comprise all technical and/or organizational measures that enable the rapid and inexpensive recovery of the systems, data, software products and/or procedures after occurrence of impairment to the ready status.
- 6.2.7 The customer shall proactively inform Fujitsu of any system changes/extensions and/or changes to interfaces or installation/ device locations.
- 6.2.8 After a successful on-site service assignment the customer shall be obliged to countersign a service report for the service engineer, if presented with one. The customer shall notify Fujitsu of any objections and complaints in conjunction with incorrect elimination and/or non-elimination of errors in writing on the service report or address written notification to Fujitsu immediately after ascertaining the error concerned. All objections and complaints have to be raised and notified to Fujitsu by Customer within two weeks at the latest from Customer first noticing the error concerned, otherwise the corresponding objection / complaint shall be precluded. Independent from customer's knowledge of the corresponding error, an exclusion period of 1 (one) year as of the date of the respective service assignment shall apply for the enforcement of the appropriate objections and complaints.
- 6.3 Duties to cooperate, contract performance within the framework of remote service:
- 6.3.1 If the services as shown by the respective service data sheet are provided wholly or partially via remote maintenance/remote access (remote services), the customer shall - in addition to the required telecommunication and Internet connections (including the provision of functioning browser software) - be obliged to accept and implement the installation of a standard software utility program

for remote access (remote access tool) to be provided by Fujitsu as well as to ensure its functioning for the duration of the service agreement. Depending on the remote access tool used, it is also possible for merely a temporary download of software elements to be necessary. The property rights to the respective remote access tool shall remain with the respective owner at all times.

- 6.3.2 During the installation or downloading of the respective remote access tool the customer shall be requested to accept the software license agreement of the respective software manufacturer and the corresponding data privacy regulations that are attached to the installation routine or download procedure. If requested, Fujitsu shall at any time also provide the customer with the appropriate regulations in advance. The use of the respective remote access tool shall also be subject to the terms and conditions of this service agreement as well as the conditions of any additionally applicable manufacturer warranty. If and to the extent that the customer does not accept the appropriate regulations of the software licensor, installation/download of the remote access tool as well as the associated remote service delivery by Fujitsu shall not be technically possible. Any resulting service restrictions, in particular breaches of the agreed service levels due to the customer's refusal to allow remote access, shall not be the responsibility of Fujitsu and shall be borne by the customer.
- 6.3.3 Fujitsu support engineers shall obtain remote access to the defective device for the problem elimination with the aid of the respective remote access tool. The use of this remote access tool for problem elimination by support engineers shall include the analysis of the customer's system configuration, the displaying and processing of customer's files, registration, the displaying of customer's screen as well as the displaying of comments on customer's screen and assuming control of customer's system. If and to the extent that the customer has not actively granted permanent approval for remote access by Fujitsu as part of the configuration of the remote access tool, new active approval of remote access shall be required from the customer for every remote access session. The customer can end the session at any time by means of the input function provided in the operating guide of the respective remote access tool.
- 6.3.4 Fujitsu shall collect, administer, process, and use the diagnosis data, as well as any technical or use-related information associated with the service assignment. This particularly includes device information about the computer being accessed, the system software and software programs used as well as the connected peripheral devices. Fujitsu shall be entitled to collect, save, process and use this information for the provision of software updates, product support, product information and other services (if available), as well as anonymously for the further development, simplification or improvement of products and/or services. There is no intent to otherwise access personal data or collect such data via the remote access tool. Any inadvertently collected or displayed personal data shall be handled in compli-

ance with the statutory regulations regarding data privacy and Fujitsu's data privacy guideline. Transfer of data between the customer system and Fujitsu shall be in encrypted form.

6.3.5 Remote access sessions may, for quality assurance purposes, be monitored or recorded by Fujitsu.

6.3.6 Fujitsu engineers may be located, and access Customer systems from, outside the European Economic Area (EEA) and the customer agrees to the installation or download of remote access tools so that Fujitsu may export, use and save any personal data affected by the use of the remote service and other information, with which the customer can be identified outside the EEA, for the provision of Fujitsu remote services and any other connected Fujitsu products and services.

6.3.7 Activation of third-party providers / Fujitsu service partners for remote tool use:

6.3.8 As a result of the supplementary agreement with the customer or with the customer's approval the remote service tool can also be activated for the delivery of remote services by designated third-party providers. However, in these cases Fujitsu shall only provide the remote service infrastructure. Unless otherwise agreed both explicitly and in writing, the customer alone shall therefore bear the risk of illicit or incorrect use of the remote access right by such a third-party provider that is associated with activation. Liability of Fujitsu for service activities and/or another action or inaction on the part of the activated third-party provider shall be excluded, unless the action or inaction of the corresponding third-party provider is based on an explicit and written order from Fujitsu (subcontractorship).

## 7 Prices, payment terms and conditions

7.1 The flat-rate list prices of Fujitsu for hardware and software support services (one-time payment and recurring charges) shall be considered as a payment for all services explicitly described in the service data sheet as a service component.

7.1.1 Upon purchase the one-time service prices shall become due for payment in advance.

7.1.2 The monthly service prices shall be paid starting from the effective date of the agreement for the remainder of the current calendar quarter and thereafter quarterly in advance.

7.1.3 Yearly service prices shall be paid annually in advance beginning from the effective date of the agreement.

7.2 In the event that the usual flat-rate list prices for services of Fujitsu are increased in order to compensate for any increases in personnel expenses or other costs, Fujitsu may increase the prices for any services that have not yet become due accordingly, if these have been affected by the development regarding costs.

7.3 The service charge for Fujitsu hardware and software support services, which are purchased from a

Fujitsu sales partner, shall be paid in advance to Fujitsu or the sales partner who brokered the Fujitsu service product as a one-time flat rate upon purchase and independent of any subsequent activation.

7.4 Apart from the services prices, Fujitsu shall charge the following separately at its respective valid list prices on a material and expenditure incurred basis:

- services requested by the customer that are not included in the agreed scope of services as defined in the service data sheet,
- any installation, setup, moving, consulting, software engineering, and other services requested by the customer,
- diagnosis and elimination of faults or damage caused by improper handling or by any other circumstances for which Fujitsu is not answerable,
- services that are provided at the request of the customer outside the contractually agreed service times,
- first check and any repair work required when taking over services of products already in use,
- first check and provision of software fixes/patches and updates and/or any other updates, if necessary, when taking over services of software products already in use.

7.5 The payment for expense-related additional services, which are provided in return for payment, shall become due immediately after the service has been provided and the customer has received the invoice.

## 8 Warranty for the provision of services

8.1 Fujitsu shall warrant that the parts, which were repaired during the service assignment or installed in the object entitled to services, related to the description issued by Fujitsu and which was valid at the time of the delivery to the customer, are new or as good as new and have an at least similar functionality.

8.2 If Fujitsu is obliged to provide warranty, Fujitsu shall at its discretion either repair or provide replacement free-of-charge. If the repair repeatedly fails, the customer can after setting a deadline demand an appropriate reduction in the service price or terminate the service agreement with effect for the remaining service period. Any additional claims of the customer arising from warranty rights shall also be excluded after the expiry of a period of grace, unless liability is mandatory according to these terms and conditions (liability). However, this clause does not imply a change in the burden of proof to the detriment of the customer.

8.3 Defects that have been caused by improper handling, attempts at repair by the customer or by third parties, use of force, changes to the original product or any other circumstances for which the customer is answerable, shall be excluded from the warranty. This shall also apply for defects and damage that were caused due to the fact that the object entitled to services was not used according to the provisions of the corresponding product-specific documentation, in particular the safety guide, instructions or operating instructions issued by Fujitsu or were installed - in particular for customer replaceable units (CRU) - by the customer.

8.4 In the event of any conflict between the following sections 9 – 13 and the Fujitsu Sales Conditions of Contract, Fujitsu Sales Conditions of Contract take precedence.

## 9 Liability of Fujitsu for the infringement of third-party protective rights

9.1 If a third party enforces claims against the customer for the infringement of industrial property rights or copyrights in Austria (hereinafter referred to as "protective rights") by using the goods/services provided by Fujitsu and if the use of the goods/services in Austria is thereby impaired or forbidden, Fujitsu shall be liable as follows; such liability being limited to a period of one year from the start of the statutory limitations period:

Fujitsu shall at its discretion and expense either change or replace the goods/services in such a way that they shall not infringe the protective right, but nevertheless essentially conform to the agreed specifications, or release the customer from paying license charges to the third party for the use of the goods/services. If this is not possible for Fujitsu at reasonable terms and conditions, Fujitsu shall be obliged to withdraw the goods/services and refund the remuneration paid. Fujitsu may demand reasonable compensation from the customer for the use of the goods/services.

9.2 Conditions for the liability of Fujitsu according to section 9.1 are: the customer shall notify Fujitsu in writing without delay of any third-party claims for an infringement of protective rights, the claimed infringement shall not be acknowledged, and conducting any dispute including any out-of-court settlements shall only be in consultation with Fujitsu. The customer shall be obliged to inform the third party concerned that the discontinuation of use of the goods/services does not imply any acknowledgement of any infringement of the protective right(s) if the customer should decide to discontinue the use of the goods/services or for other good reasons.

9.3 If the customer itself is responsible for the infringement of protective rights, claims against Fujitsu according to section 9.1 is excluded. This also applies insofar as the infringement of protective rights is attributable to any particular specifications set by the customer, has been caused by use which Fujitsu cannot foresee or caused due to the customer having altered the goods/services, or used together with goods/services not provided by Fujitsu.

9.4 Any additional claims of the customer due to an infringement of third-party protective rights shall be excluded. The right of the customer to terminate the agreement with good cause according to section 10.1 as well as the regulations in sections 10.2 to 10.4 shall not be affected.

## 10 Liability of Fujitsu

10.1 If a service is not provided as agreed under these terms and conditions and if Fujitsu is responsible for this, then Fujitsu shall be obliged to provide the service without any additional expenses for the customer, within a reasonable time limit, as agreed. If the service cannot be provided as per agreement within a reasonable addition-

al period of time set by the customer for reasons for which Fujitsu is responsible, the customer shall be entitled to cancel the service concerned.

10.2 Fujitsu shall be liable without restriction for any damage it caused resulting in death or injury to persons (injury to life, the body or health) as a result of its negligence, and in the case of property damages for which it is responsible its liability for damages incurred shall be limited to a maximum sum of €250,000 for each event of loss or damage. The obligation to reimburse damages if any damage is caused to data media material shall not include the reimbursement of any expenditure(s) for the retrieval of any lost data or information.

10.3 Any additional claims for defects or claims for damages or for reimbursement of costs by the customer, or any claims other than those specified in this agreement, in particular any claims for outage, lost profits, loss of information or data, claims for special, consequential or indirect loss or damage, regardless of their cause in law, is excluded, except where mandatory liability which cannot by law be excluded applies for example under the Product Liability Act or in the case of intent, gross negligence or infringement of material contractual obligations. However, claims for damages or reimbursement of costs due to an infringement of material contractual obligations shall be limited to the foreseeable damage that is typically to be expected under the agreement, except in the case of intent or gross negligence.

10.4 The reversal of the burden of proof detrimental to the customer is not implied by the above provisions in sections 10.2 and 10.3.

## 11 Secrecy, data privacy, suborders

11.1 Each party shall use all the documents, information and data it receives from the respective other party and which are marked as confidential solely for the performance of the contracted service. The receiving party shall treat any such documents and information as confidential towards third parties who are not involved in the performance of the respective contract, except if any such documents and information are or become, without breach of this confidentiality undertaking, generally known, or in case of mandatory disclosure due to a binding order by a court or government authority or if the other party has approved the disclosure in advance. Fujitsu may use anonymised data pertaining to the customer for evaluation, quality assurance and statistical purposes.

Each party shall comply with the applicable data protection laws. Information about the processing of personal data by Fujitsu as the controller in connection with the performance of contracts and the information to be provided according to Articles 13 and 14 GDPR is available on the respective internet site of the service providing Fujitsu entity, which may be viewed online at <https://support.ts.fujitsu.com/IndexWarranty.asp?lng=COM>

and the latest version of the warranty booklet of Fujitsu. The customer shall inform its personnel and other persons, who the customer involves in the performance of the contract, accordingly.

If a Support Pack has been purchased from Fujitsu or a Fujitsu Sales Partner, Fujitsu may transfer registration data to the contractual Fujitsu Sales Partner and/or Service Partner, in order to deliver the required service and to proactively inform the customer when the service is about to expire.

11.2 If Fujitsu is processing personal data on behalf of the customer as part of the performance of a contract, Fujitsu will be acting as a processor for the customer, who remains the controller in respect of such data processing. Fujitsu will only process the personal data on the documented instructions of the customer or as otherwise required by applicable law. In the latter case, Fujitsu will inform the customer of any such requirement before processing, unless the relevant law prohibits such information on important grounds of public interest. The customer will be responsible for compliance with any legal requirements for a processing by Fujitsu on behalf of the customer. Where necessary, Fujitsu and the customer will enter into a separate agreement in accordance with Article 28 (3) GDPR. Fujitsu can provide respective standard contracts upon request. Details regarding the technical and organisational measures, which Fujitsu will apply as a minimum to maintain an appropriate level of protection for the processing of personal data, can be found on the respective internet site of the service providing Fujitsu entity.

The personnel of Fujitsu and its sub-contractors who are authorised to process personal data are bound by a confidentiality undertaking. Upon request and separate, reasonable compensation, Fujitsu will provide such assistance to the customer in relation to requests from data subjects exercising their rights laid down in Chapter III of the GDPR and its obligations pursuant to Articles 32 to 36 GDPR, which Fujitsu is reasonably able to provide. Fujitsu will notify the customer without undue delay and in reasonable detail upon becoming aware of the occurrence of any personal data breach affecting the personal data processed on behalf of the customer while in Fujitsu's possession or under its control. Fujitsu will, in relation to any such data security incident arising as a result of a breach of its obligations and of which it becomes aware, take reasonable steps to identify and correct the underlying cause of the data security incident so as to mitigate or exclude the risk of re-occurrence of similar data security incidents. Fujitsu will delete all processed personal data in its possession or under its control following the end of the provision of the relevant services unless agreed otherwise or to the extent storage is required by applicable law.

11.3 Fujitsu may award subcontracts. The customer generally agrees that Fujitsu may engage sub-contractors as sub-processors for the processing of personal data in accordance with Article 28 para. 4 GDPR. The customer further agrees that, subject to applicable data protection laws, such sub-contractors may be located outside of the European Economic Area, for example in Eastern Europe or Asia Pacific (e.g. Japan or India). Information about sub-contractors engaged by Fujitsu is available on the respective internet site of the service providing Fujitsu entity. Any intended changes concerning the addition or replacement of other sub-contractors will be published there as well.

11.4 The customer will grant technical access to personal data in connection with remote services to Fujitsu only if this is strictly required to perform the remote services. Fujitsu will not access personal data in connection with remote services, unless this is strictly required to perform the remote service. To the extent that access to personal data is strictly required to perform a remote service or if any problem or diagnostic data used by Fujitsu contains personal data, Fujitsu will access such data only for the purpose of providing the remote service and will not use it otherwise; in this respect, Fujitsu will only act in accordance with the documented instructions of the customer. Sections 11.2 and 11.3 shall apply in addition.

11.5 The customer remains responsible for any data stored on storage media returned to Fujitsu in connection with guaranty or warranty cases. Unless otherwise agreed in a particular case, Fujitsu will, on behalf of the customer, either destroy the storage media or delete the data by applying a deletion process that complies with the recognised state of the art; sections 11.2 and 11.3 shall apply in addition. Until deletion or destruction, Fujitsu will take all appropriate technical and organisational measures to protect the storage media against loss or unauthorised access.

11.6 Fujitsu shall commission, on a regular basis, a reasonable and appropriate audit, by an appropriately experienced and qualified auditor, of the technical and organisational measures that it has in place to protect its customers' data, including the personal data. Upon request, Fujitsu shall make available to the customer an appropriate summary of each report produced as a result of such an audit to the extent it relates to the processing of the customer's personal data. Fujitsu may redact or remove any information which is confidential to any other customer of Fujitsu or in which Fujitsu has another legitimate interest of confidentiality.

11.7 The customer shall assure that all legally required prerequisites (e.g. by obtaining declarations of consent) have been established to such an effect that Fujitsu can also provide the agreed services free from any legal infringements.

## 12 Export license

12.1 The export or re-export of products and services, including the immaterial transfer of goods and know-how as well as technical support and the transfer of any technical support documentation in conjunction with this agreement may be subject to approval obligations, e.g. by reason of type or intended purpose. If objects under this agreement are intended for export, the customer itself shall be obliged to observe the corresponding export control regulations and to obtain the required licenses. If requested, the parties to the agreement shall agree to provide the information required to acquire the license.

12.2 Exports, re-exports and the provision of work and services in conjunction with this agreement may not take place if there is any reason to assume that service delivery or use of the deliverables will be in connection with chemical, biological or nuclear weapons or missiles capable of delivering such weapons. The parties to the agreement shall comply with the latest versions of the corre-

sponding sanction lists of the European Union, Austria, Japan, USA (e.g. European Sanctions List, Denied Persons List), as well as any comparable, applicable regulations of other countries and other warnings or restrictions on deliveries/prohibitions from the appropriate authorities and shall act accordingly.

12.3 Shipments and services (the fulfilment of contract) shall be under the proviso that fulfilment is not being restricted by any national or international regulations, particularly export control regulations and embargoes or any other restrictions. Delays caused by export checks or licensing procedures shall override any lead times or deadlines stipulated. If any required licenses for certain items cannot be obtained, the contract shall be considered as not concluded regarding the items in question; because of this and of above mentioned transgression of deadlines, any claims for damages shall be excluded.

12.4 A breach of the provisions of this section shall be considered as a serious infringement of contractual obligations.

### **13 Assignment of contractual rights and obligations, ancillary agreements, place of jurisdiction**

13.1 Once the service obligation has begun, any assignment of the customer's service claims against Fujitsu to a third party may only take place in conjunction with the sale or another form of transfer of the ownership in the object entitled to services. Fujitsu may assign claims arising out of this service agreement to third parties at any time.

13.2 The customer shall only entitled to offset claims or exercise any right of retention in connection with counterclaims that have become res judicata or are not contested by Fujitsu.

13.3 Ancillary agreements, amendments and/or supplements shall require the written form.

13.4 If any specific provisions of this agreement are invalid, either in whole or in part, this shall not affect the validity of this agreement, unless the continuation of this agreement would be an unreasonable hardship, even if the statutory regulations applied supplementarily were taken into account. In this case, the parties shall agree a new regulation of the points concerned, which is both

valid and comes as close as possible to the contents of the intended regulations originally agreed between the parties.

13.5 Austrian law shall apply with the exclusion of the referral rules. The provisions laid down in the UN Convention on the International Sale of Goods (CISG) shall be excluded. Notwithstanding the other provisions of this Agreement, Fujitsu shall be entitled to bring an action in any jurisdiction with respect to the protection of its intellectual property rights or other rights or those of its licensors.

13.6 The sole place of jurisdiction for all disputes arising out from this contractual relationship shall be Vienna. This shall not apply if the customer is not a merchant in the meaning of the Austrian Commercial Code.

13.7 Nothing in this Agreement shall affect the statutory right of a customer dealing with Fujitsu as a consumer as defined in any consumer protection legislation intended to protect consumers in similar transactions.

13.8 We endeavor to settle any and all disputes that might arise out of or in connection with our products or the contractual relationship with you in an amicable way. As our product offerings are not directly and primarily aimed at the consumer sector we are asking our consumer customers for their understanding that we have decided not to participate in the voluntary conciliation procedures before the consumer arbitration service facilities as envisaged under EU Directive 2013/11/EU. Instead, if at any time our products should give rise for complaint we would like to ask our Customers to make use of our Fujitsu Help Desk for contacting our competent Fujitsu service and support team. Except for cases of abuse, in the first instance the evaluation of incidents and customer claims by our service and support team is also free of charge for the Customer. Should we not be able to resolve the incident your right of recourse to the courts remains unaffected.