



## Terms of Use

Welcome to our E-Procurement Portal (as defined below). In the following we would like to introduce you to the terms and conditions under which this E-Procurement Portal is provided to you for use.

### 1. Definitions

**“E-Procurement Portal”** shall mean the web based tool provided by FTS to Customer and Partner in order to enable them to process a purchase transaction with regard to the Products or to exchange the information via electronic means supported by this tool.

**“Customer”** shall mean any business customer who orders Products in the E-Procurement Portal.

**“Partner”** shall mean any business customer ordering Products offered by FTS in the E-Procurement Portal for resale purposes and/or for its own needs.

**“FTS”** shall mean any legal entity within Fujitsu Technology Solutions Group.

**“Products”** shall mean any products and/or services offered in the E-Procurement Portal.

**“Personal Login Data”** shall mean a personal User Identification and a Password of the User.

**“User”** refers to an individual appointed by the Customer/Partner who is entitled to use the E-Procurement Portal according to these Terms of Use on behalf of the Customer/Partner and within the authorization provided by FTS Local Administrator or Admin User.

**“FTS Local Administrator”** shall mean an employee of FTS who will be responsible for administration of Customer's/Partner's account, such as first registration, creating User Login data as many as requested by Customer/Partner, disabling and/or deleting User Logins, i.e. if Customer/Partner wishes to deny its employee the User rights due to termination of his employment.

**“Admin User”** shall mean an employee appointed by the Customer/Partner who will act as a Local Administrator of the Customer's/Partner's account. The Customer/Partner shall notify FTS via FTS Local Administrator of such appointment. Admin User will enjoy similar administration rights as FTS Local Administrator as described above. The Admin User will be able to create a new User Personal Login Data for each employee and assign specific User rights to him, e.g. for Ordering or Order Tracking. The Admin User will also be able to administrate his Users and be able to specify new roles for them.

### 2. General

2.1 Any use of the E-Procurement Portal, is subject to these Terms of Use. Upon Login, access or use of the E-Procurement Portal, Customer/Partner accepts these Terms of Use in their current version as basis for the use of this E-Procurement Portal. Customer/Partner shall ensure that his Users will observe this Terms of Use while using the E-Procurement Portal.

2.2 Each Customer and Partner may use the E-Procurement Portal under these Terms of Use. The Customer may order Products both from FTS and from Partners. The rights and obligations ensuing from the acquisition transactions made at the E-Procurement Portal will be based on the respectively applicable delivery terms of FTS or the Partner, unless otherwise agreed between the Parties.

2.3 FTS will merely provide the electronic platform for the conclusion of agreements between the Customer and the respective Partner, as far as the Customer orders from the Partner. The indicated prices are recommended retail prices. The Partner is at liberty to accept or decline the offer of the Customer to buy the product at the indicated price.

In particular, FTS will not assume any obligations of a broker, commission agent, representative or independent dealer as far as the Customer orders from the Partner. The Partner will be the sole contracting partner of the Customer. FTS assumes no obligations to provide consulting services to the Customers of the E-Procurement Portal, unless explicitly agreed otherwise. FTS assumes no obligations and is therefore not liable for the quality of the Products offered by the Partner, or the fulfillment of any agreements concluded with the Partner. FTS does not assume any warranty for the information provided by the Partner, in particular with regard to the Products, documentation or information uploaded in the E-Procurement Portal.

As far as the Customer/Partner orders Products from FTS, the FTS "General terms and conditions of Sale to Business Customers" shall apply.

2.4 The provisions of these Terms of Use imposing any obligations upon or granting any rights to the Users or Admin User shall be also applicable to the Customer/Partner who has appointed the respective Users or Admin User.

2.5 E-Procurement Portal aims to facilitate an ordering procedure between Customer and Partner and is an additional voluntary service provided by FTS. Therefore Customer/Partner acknowledges that FTS expressly excludes any liability to the extent permitted by law for the continuous availability of the E-Procurement Portal. FTS additionally reserves the right to fully or partly stop operating and/or providing this E-Procurement Portal or limit an access to it at any time.

### **3. Customer/Partner Use**

3.1 E-Procurement Portal enables the Customer/Partner to:

- access the secured Customer/Partner area which contains the Products offered for sale and Customer/Partner-specific prices,
- place an order with FTS or Partner,
- track an order,
- obtain the information about previous orders (reports),
- view Customer/Partner-related documents such as order confirmations, delivery notes and invoices.

3.2 For the more detailed information about the use of E-Procurement Portal the Customer/Partner may contact FTS Local Administrator.

3.3 Once the Customer/Partner finally sends an order a retraction of the order or a disruption of the ordering process is no longer possible.

### **4. Extended Partner Use**

4.1 Partner shall use the "Order Administration" of the E-Procurement Portal for

- search for received orders from the Customers upon receipt of the order number,
- update status of received orders by providing the information requested by E-Procurement Portal masks,
- upload order confirmations, delivery notes and invoices.

4.2 Partner is fully responsible for the content of information provided by him via E-Procurement Portal and will indemnify FTS for all and any claims, damages and costs with regard hereto. Furthermore Partner undertakes to provide the information in a timely manner in order to enable the Customer to track his order and update the status of order processing.

## **5. Registration / Password Protected Access**

5.1 In the interest of reliability, safety and security and with a view to the legal implications of the business transactions (Orders) initiated via the E-Procurement Portal, only registered Users may access the E-Procurement Portal. FTS reserves the right to deny registration to any potential User as well as the right to declare certain sub sites subject to further registration requirements, although they may have previously been freely accessible to the User.

5.2 The use of the E-Procurement Portal requires that each Customer/Partner will be allocated a specific URL and each User will be provided with Personal Login Data. The Customer/Partner will only be able to access the information provided for him. Other data and files, in particular to data and files of other Customers/Partners of FTS are inaccessible provided that the respective Personal Login Data are not known by third parties.

5.3 In order to open an account at E-Procurement Portal the Customer/Partner shall contact the FTS Local Administrator who will then register User/Admin User as requested by Customer/Partner. Every registered User/Admin User will then automatically receive an e-mail notification with his Personal Login Data. Registration shall only be carried out using the Customer's/Partner's and User's true name and correct data required for the registration. If and when registration data change, the Customer/Partner shall update them (to the extent possible: online) without undue delay. The Customer/Partner shall ensure that his contact data supplied to FTS are kept up to date at all times so that the User can be contacted by FTS at any time.

5.4 It is within the User's sole responsibility to keep his Personal Login Data in confidence and avoid any misconduct with regards to the use of his Personal Login Data. The Personal Login Data are not transferable. The Admin User is obliged to set up a separate Personal Login Data for each potential User in his company. In case the User should discover that his Personal Login Data has unintentionally been made accessible to any unauthorized and/or third party or that there might exist any danger of misuse, User shall immediately inform Admin User or FTS Local Administrator. Admin User or FTS Local Administrator shall then take measures to block the respective Personal Login Data. Upon an application of the Customer/Partner or a new registration and after a danger of misuse is averted FTS will unblock the Personal Login Data. Customer/Partner shall ensure that his Users will keep theirs Personal Login Data in confidence and will not transfer them to anyone.

5.5 Notwithstanding the above however, FTS shall not be liable in contract, tort or under any legal theory that might considered to be applicable, for any damages resulting from the any abuse of any Personal Login Data, unless such abuse was caused through the intentional or gross negligent conduct of an FTS employee or a third party acting on behalf of FTS. In addition FTS reserves the right, at any time and without having to indicate any specific reasons, to cancel or limit the User's right to access the password-protected area by blocking its User Data.

5.6 For safety reasons, a User ID will automatically be locked, if an incorrect password has been entered three consecutive times. However the Admin User or FTS Local Administrator will be able to unlock this user ID and also assign a new password.

## 6. How to use the E-Procurement Portal

6.1 In order to log in to the E-Procurement Portal the User will have to enter his Personal Login Data. Depending on the User rights of the respective account the User will then be able to use different available functions. At the end of the session it is recommended that the User always logs himself out by using the menu "Logoff", in order to prevent unauthorized access.

6.2 Every User may use the information and documents offered to him in the E-Procurement Portal only for the purposes for which the information and documents were provided. Any other use of the information and/or documentations, especially any type of replication, alteration, or integration in any publishing or advertisement of any kind is only permitted with prior, explicit and written consent of FTS or the particular owner of the information. FTS specifically draws attention to the fact that the information can be subject to various intellectual property rights and these property rights shall remain unaffected.

6.3 Users will not remove or alter the legends or notes referring to the existing industrial property rights (such as ©, ®, TM) and will respect them.

6.4 No claims can be asserted to FTS with regard to publication/upload of documents, commentaries, texts, concepts, ideas, scripts, artwork or reports (the 'Documents') on the E-Procurement Portal. Customer/Partner is not entitled to compensation and can not claim from FTS any payment for Documents transmitted to and/or uploaded in the E-Procurement Portal, or for any other use of Documents.

6.5 The Customer/Partner warrant that they are entitled to use and transfer of the Documents transmitted/uploaded with regard to the relevant intellectual property rights. In the event of any infringement of any third parties' intellectual property rights in connection with the publication/upload of any Documents transmitted, the Customer/Partner will indemnify FTS against any and all third party claims and will reimburse any other damage, costs and expenses incurred by such an infringement to FTS, in particular the costs of legal defence.

6.6 If the User has forgotten his password, he will be able to receive a new one by using the "Forgotten password"-button. After entering his e-mail address, he will automatically receive a new one via e-mail.

6.7 In addition, while accessing and or using the E-Procurement Portal the User shall not

- harm other persons, in particular minors, or infringe their personal rights;
- breach public morality in its manner of use;
- violate any intellectual property right or any other proprietary right;
- upload any contents containing a virus, so-called Trojan Horse, or any other program that could damage data;
- transmit, store or upload hyperlinks or contents to which the User is not entitled, in particular in cases where such hyperlinks or contents are in breach of confidentiality obligations or unlawful; or
- distribute advertising or unsolicited e-mails (so-called "spam") or inaccurate warnings of viruses, defects or similar material and the User shall not solicit or request the participation in any lottery, snowball system, chain letter, pyramid game or similar activity.
- use trivial passwords, such as Password, Test or 1234 but the new password has to be at least 8 digits long with 1 capital letter, 4 small letters, 2 numbers and 1 special sign. FTS reserves the right to check the security of the passwords.

6.8 FTS reserves the right to check the data exchanged between the Customer and the Partners. However, FTS shall not be obliged to verify whether the data exchanged are lawful. In particular, if FTS does not object to any unlawful data exchange, this will not imply that FTS has waived its claims ensuing from this.

## **7. Blocking of accounts / Termination of Use**

FTS shall be entitled upon notice, at any time and without having to provide specific reasons, to block the User's right to access the password-protected area by blocking their Personal Login Data, especially in cases including but not limited to Users:

- providing false data for the purpose of registering or ordering;
- violating these Terms of Use or neglecting general duties of care with regard to User Data;
- violating applicable laws;

For safety reasons, FTS shall be entitled to block the Users, without prior notice, in order to protect the whole system.

## **8. Hyperlinks**

The E-Procurement Portal may contain hyperlinks to web pages of third parties. FTS shall have no liability for the contents of such web pages and does not make representations about or endorse such web pages or their contents as its own. FTS does not control the information on such web pages and is not responsible for the contents and information given thereon. Neither shall FTS be liable for the quality, correctness, nor completeness of any third party information expressly provided in the E-Procurement Portal as third Party information, including any information supplied by any of the sales partners.

## **9. Software download**

If Software is offered for download by FTS, any and all use of such Software shall be subject to the relevant license conditions of the legitimate supplier or the particular manufacturer (license agreement). These terms will be transferred together with the software and/or are obtainable from the manufacturer/legitimate supplier of the Software. In general User will not be able to install such Software, before or without accepting the relevant licensing terms and conditions provided. Software offered for download will in general be exclusively intended for private use or testing purposes only. Any other use may and will be pursued according to criminal and civil law. Mandatory User rights shall remain unaffected within the particular scope of law as applicable a respective territory. To the extent permitted by law FTS excludes its liability for damages, which result directly or indirectly from using downloaded data file.

## **10. Important Notice on Computer Viruses**

Although FTS makes every endeavor to keep the E-Procurement Portal and FTS Web Site free from viruses, FTS cannot provide any warranty or guarantee that it is virus-free. The Customer/Partner shall, for its own protection, take the necessary steps to ensure appropriate security measures and shall utilize a virus scanner before downloading any information, software or documentation.

## **11. Limitation of Liability**

11.1 The information on the E-Procurement Portal may contain general descriptions related to the specifications or technical performance of individual products which may not or no longer be available in certain cases (e.g. due to product changes). It is exclusively within the Customer's own responsibility to verify whether the ordered Products meet the Customer's specific requirements and/or will be fit for the Customer's purposes of use. The Customer shall also be responsible for verifying product specifications and performance indications of the ordered Products regarding the individual order, in particular by referring to the official FTS Product data sheets current at the time of the order and/or by contacting the responsible FTS Sales employees.

11.2 Insofar as any information, hardware, software and/or documentation is made available to the Customer/Partner at no extra cost, any liability of FTS with respect to any of the information, hardware, software and/or documentation not being up to date, being incomplete or incorrect/defective, as well as any liability resulting from any possible misinterpretation of the supplied information by the User and any liability for defects as to quality, title or fitness for a particular purpose is limited to cases of gross negligence or willful misconduct of FTS or its employees. Except for cases of willful or fraudulent misconduct of FTS or its employees under no circumstances FTS shall be liable for any consequential or incidental damages, including but not limited to lost profits, cancellation or disruption of operation and loss of data.

11.3 As far as the liability can be excluded or limited according to law, but has not been excluded or limited elsewhere within these terms, such liability is limited to € 10.000,- per damaging incident, up to an aggregate maximum sum of € 50.000,-.

11.4 This limitation of liability shall not apply to cases where liability is mandatory under the applicable law.

## **12. Data privacy**

12.1 FTS will collect the personal User data during their registration and will store, process and use such personal data for the purpose of enabling the use of the E-Procurement Portal. The details about the handling of such personal data are shown in the FTS Privacy Policy, which can be downloaded from [http://ts.fujitsu.com/privacy\\_policy.html](http://ts.fujitsu.com/privacy_policy.html). FTS strictly adheres to the data protection regulations according to EU directives, as well as the local country specific data protection regulations.

12.2 The Customer/Partner will be solely responsible for ensuring that their Users are notified of the purpose of the use of such data and will obtain their consent to the data processing of such data by FTS. Furthermore, the Customer/Partner will be solely responsible, that the respective data protection regulations, as described under 12.1, will be under his area of responsibility.

## **13. Jurisdiction / Applicable Law**

13.1 If Users access the E-Procurement Portal from other countries than Germany, they are themselves exclusively responsible for compliance with all local laws. Any Access to the information, software and/or documentation provided in the E-Procurement Portal from countries, where such content is unlawful is expressly prohibited.

13.2 These Terms of Use shall be governed by the laws of Germany. The exclusive venue of jurisdiction for all disputes arising out of or in connection with the Use of E-Procurement Portal shall be Munich, Germany.

## **Fujitsu Technology Solutions GmbH**