

FUJITSU GENERAL NEW ZEALAND LIMITED

TERMS AND CONDITIONS OF SALE 2014

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In these Terms and Conditions

- a) "FGNZ" means Fujitsu General New Zealand Limited
- b) "Buyer" means the Person(s), Company, Trust or partnership named in the Sales Invoice.
- c) "Sales Invoice" means the Sales Invoices issued by FGNZ to the buyer.
- d) "Goods" means the products specified on invoices supplied under these Terms and Conditions.
- e) "PPSA" means the Personal Property Securities Act 1999.
- f) "In Writing" means any communication in writing sent by post, courier or facsimile and includes electronic mail sent by electronic transmission.

1.2 Interpretation

- a) Any special conditions specified on a Sales Invoice shall, to the extent they are inconsistent with these Terms and Conditions, take precedence over these Terms and Conditions.
- b) The expression "Person" includes an individual, a body politic, a corporation, an association (incorporated or unincorporated), a statutory authority or any other authority or persons identified as representatives of "FGNZ".
- c) Words importing the singular shall include the plural (and vice versa).

2. GOVERNING TERMS AND CONDITIONS

Unless otherwise agreed by the parties in writing these terms and conditions (together the terms contained in the Application for credit Account form) are the only terms and conditions which are binding upon FGNZ.

3. ALTERATION TO TERMS AND CONDITIONS

FGNZ may, at any time and from time to time by written notice to the buyer, alter these Terms and Conditions of Sale.

4. GOVERNING LAW

These Terms and Conditions and any contract including them shall be governed by the law of New Zealand and FGNZ and the Buyer submit to the non-exclusive jurisdiction of the Courts of Wellington, New Zealand.

5. TERMS OF PAYMENT

- a) If the Buyer has an approved credit account with FGNZ, payment by the Buyer for goods and services supplied must be made by the 20th of the month following the date of the Sales Invoice without set off or deduction. Where the Buyer is overdue with any payment or FGNZ is in receipt of credit references which it regards as unsatisfactory;
 - (i) FGNZ reserves the right to cease supply or to change the Buyer to a Cash on Delivery (COD) account and all goods and services on a COD account shall be paid for before they are supplied.
 - (ii) All amounts owing by the Buyer to FGNZ on any account shall immediately become due and payable upon receipt of notice by the Buyer that it is a COD account.
 - (iii) The Buyer shall pay FGNZ's costs and expenses (including actual legal costs as between client and solicitor) incurred by FGNZ in relation to any recovery of goods or payment of any debt owing to FGNZ and such costs and expenses shall be recoverable from the Buyer as a debt owing to FGNZ.
 - (iv) Interest shall accrue on any overdue payment at the interest rate of 12% per annum calculated daily.
- b) FGNZ reserves the right immediately to cancel any contract for the supply of goods or services or suspend any such supply without incurring any liability to the Buyer in any of the following circumstances:
 - (i) The Buyer is overdue with any payment or otherwise in breach of these Terms and Conditions,
 - (ii) The Buyer enters bankruptcy, liquidation, or a composition with its creditors, has a receiver manager or administrator appointed over all or any part of its assets or becomes insolvent; or
 - (iii) Contractual performance is delayed or prevented due to any cause or circumstances.
 - (iv) Where the buyer is a Company and there is a change in shareholding in the company.

Cancellation by FGNZ shall be without prejudice to FGNZ's right to recover payment from the Buyer for goods and services previously supplied.
- c) No agreement for time payment shall be valid and enforceable unless agreed to in writing by FGNZ
- d) Where FGNZ has agreed in writing with the Buyer that any arrears may be paid off over time by instalments, in respect to each instalment and its due date, time is of the essence. In the event any payment is missed the full amount immediately becomes due and owing.

- e) Where FGZ has set a credit limit on the Buyer's account, and the Buyer has exceeded that limit, FGZ reserves the right to require the Buyer re-apply for an approved credit account with FGZ at a higher credit limit and FGZ may suspend trading with the Buyer until such time as the credit account application form is completed and submitted to FGZ. This may also include a requirement for a personal guarantee to be provided.

6. PRICES, QUOTATIONS

- a) In the absence of contrary express agreement, the price for goods supplied shall be based on FGZ's list price ruling at the date of delivery and the charge for services supplied shall be based on FGZ's rates ruling at the date of supply. Prices quoted in any published price list or by FGZ's representatives are subject to change without notice and are not binding on FGZ.
- b) FGZ shall not be bound by any conditions attaching to the Buyer's order or acceptance of a quotation, unless such conditions are expressly accepted by FGZ in writing prior to the delivery.
- c) A quotation is not to be construed as an obligation to sell but merely an invitation to treat and no contractual relationship shall arise until FGZ has accepted in writing the Buyer's order or FGZ supplies the goods in the buyer's order. All quotations lapse thirty (30) days after issue but FGZ may vary or withdraw a quotation at any time.
- d) FGZ's Sales Invoice is made on a supply only basis. Installation and commissioning (if any) are at the expense of the Buyer unless otherwise specified in writing by FGZ.
- e) All payments shall be made in New Zealand dollars without deduction or set off of any kind.

7. SUPPLY, DELIVERY AND RISK

- a) While every effort shall be made to fulfill orders for goods, FGZ shall not be liable for any loss or damage arising through non availability of stock.
- b) FGZ shall deliver the goods to the Buyer as soon as is reasonably practicable after acceptance of the Buyers order.
- c) Delivery shall be deemed to take place when the Buyer or the Buyer's agent or any other person or carrier to whom FGZ has been authorised by the Buyer expressly or impliedly to deliver such goods receives such goods. Upon delivery it is the Buyer's responsibility to inspect the goods supplied. FGZ shall not be liable for shortages, damage, or other errors in delivery if the buyer fails to notify FGZ in writing within 24 hours of delivery of any claim for shortages, damage, or other errors.
- d) FGZ reserves the right to deliver in instalments and all such instalments, where separately invoiced, shall be paid for without regard to the delivery of subsequent instalments. A part delivery of an order shall not invalidate the balance of the order.
- e) Any time or date for delivery given by FGZ is intended only as an estimate and FGZ shall not be liable for the consequences of delay however arising and the Buyer acknowledges that FGZ will not accept any liability for any claims or losses arising from its failure to meet the delivery date. Delayed delivery shall not invalidate this contract or subject FGZ to any penalty and the Buyer will accept the supply of goods or services when delivered and pay the price prevailing at the date of delivery notwithstanding any such delay.
- f) Subject to clause (d) delivery dates shall not be varied once they have been agreed, without FGZ's prior written approval. Should FGZ agree to postpone delivery, the goods in question shall be stored at Buyer's risk and FGZ reserves the right to impose a storage charge. Where delivery is postponed for more than 3 months, any fixed contract prices may be increased by FGZ, at FGZ's discretion, to reflect FGZ's ruling list price.
- g) The risk in the goods shall pass to the Buyer immediately upon delivery.

8. PPSA

- a) The Buyer shall do everything that FGZ may require, at the Buyer's expense, to protect FGZ's interest in any unpaid goods, including granting the registration of a Security Interest. The Buyer acknowledges that it grants a Security Interest (as defined in the PPSA) in all present and after acquired goods as security for its obligations to FGZ. The Buyer must do all things including executing all documents that FGZ requires to provide FGZ with a first ranking Security Interest in the goods.
- b) The Buyer waives the right to receive a copy of the Verification Statement under the PPSA and agrees it will have none of the rights under sections 114(1)(a), 116, 117(1)(c), 119, 120(2), 121, 125, 129, 131, 132, 133 and 134 of the PPSA. Where FGZ has rights in addition to those in part 9 of the PPSA the Buyer agrees that those rights shall continue to apply and will not be limited by section 109 of the PPSA.
- c) The Buyer agrees to indemnify FGZ for any cost FGZ incurs in registering, maintaining and for enforcing the security interests created by these terms including actual legal costs on a solicitor/client basis.
- d) The Buyer must immediately notify FGZ if it changes its name, shareholding, Director/s Trustee (whatever the case may be).

9. DIMENSIONS, PERFORMANCE DATA AND OTHER DESCRIPTIVE DETAILS

- a) Photographs, drawings, illustrations, weights, dimensions, and any other particulars accompanying, associated with, or given in a quotation, the FGZ descriptive literature or a catalogue, approximate the goods offered but may be subject to alteration without notice.
- b) Any performance data provided by FGZ or the manufacturer is an estimate only and should be construed accordingly.
- c) FGZ reserves the right to make changes in the construction and/or design of goods and notwithstanding any such changes the Buyer shall accept in performance of any order, FGZ's current corresponding standard models.

- d) The Buyer expressly acknowledges and agrees that it has not relied upon any of the information provided by FGZ to the Buyer and that it understands that any of the information provided by FGZ in relation to the goods or services prior to the sale of the goods or services only approximate the goods or services and can only be treated as an estimate.
- e) The Buyer expressly acknowledges and agrees that it has not relied upon and FGZ is not liable for any advice given by FGZ, its agents or employees in relation to the suitability for any purpose of goods or materials supplied by FGZ.
- f) Where FGZ is acting as agent of a manufacturer or supplier, FGZ shall not be liable for any alteration or variation in the goods made by the manufacturer or the supplier.

10. WARRANTY AND QUALITY

- a) Notwithstanding clause 9 (e) here in all goods supplied to the Buyer are covered by a warranty. This warranty is either supplied with the goods or is displayed on the current ruling price list for the goods.
- b) The Buyer shall immediately notify FGZ in writing upon the discovery of any defect in the goods. The Buyer shall not carry out any remedial work or installation to alleged defective goods without first obtaining the written consent of FGZ to do so.
- c) The only conditions and warranties which are binding on FGZ, other than the conditions and warranties expressed in these Terms and Conditions or on the current price list, are those conditions and warranties imposed and required by any applicable legislation.
- d) The Buyer acknowledges that to the extent FGZ has made any representation which is not otherwise expressly stated in these Terms and Conditions, the Buyer has been provided with an opportunity to independently verify the accuracy of that representation.
- e) Where this Agreement would otherwise be subject to the Consumer Guarantees Act 1993 ("Act"), the Buyer agrees that it is acquiring the goods for business purposes and that the Act does not apply to the supply of goods to the Buyer.

11. BUYERS CANCELLATION AND RETURNS

- a) The Buyer may return goods supplied for a credit against subsequent supplies provided the following conditions are satisfied
 - (i) FGZ's written approval on a Return Material Authority (RMA) has first been obtained.
 - (ii) The goods are returned in their original condition and are not obsolete, aged, worn or deteriorated by the passage of time; and
 - (iii) The Buyer agrees to pay to FGZ a handling charge ruling at the time of return, but no greater than a value equal to 10% of the price paid for the goods.
 - (iv) No request to return goods may be made later than three (3) months following delivery unless covered by FGZ's warranty or the consumer Guarantees Act 1993.
- b) The Buyer may cancel, in whole or in part, any contract for the supply of goods or services before supply has been made if the following conditions are satisfied;
 - (i) FGZ's written approval has been first obtained; and
 - (ii) The Buyer agrees to pay any cancellation charges, being a genuine pre-estimate of FGZ's loss that FGZ shall specify.

12. FORCE MAJEURE

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

13. LIABILITY OF FGZ

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

- a) FGZ's liability under this Contract or any Contract collateral hereto is limited to replacing (or at the election of FGZ repairing) any defective materials to the entire exclusion of any other remedy which, but for this Clause, the Buyer might have. FGZ shall be under no liability for any damage, injury, direct or consequential or other loss or loss of profits or costs, charges and expenses on the part of the Buyer or any other person other than to repair or replace as mentioned above. FGZ shall not be liable to the Buyer if for any reason beyond FGZ's control it is not able to deliver or supply any of the goods.
- b) The Buyer indemnifies FGZ against any liability for any direct, indirect, or consequential injury, loss or damage arising out of any act, default, or omission of, or any representation made by the Buyer or its servants or agents.

14. AGREEMENT TO MORTGAGE

For better securing the obligations of the buyer pursuant to these Terms and Conditions, the buyer will upon demand from FGZ, their agents or assigns, execute in favour of FGZ a good and registerable Mortgage (on terms as set out in the Auckland District Law Society Mortgage

Memorandum 2007/4238) over any real property held by the buyer either alone or jointly with anyone or acquired by the buyer at any time hereafter, to secure the buyers obligations under their trade account with FGZ and the buyer hereby charges any such real property with repayment of any and all monies due by the buyer and any credit, provided by FGZ to the buyer from time to time. The Buyer appoints FGZ as attorney for the purposes signing and enforcing the mortgage. If requested by FGZ the buyer will enter into a separate agreement to mortgage to secure credit granted on any Trading account granted to the buyer.

15. INSTALLATION OF FGZ PRODUCTS

- a) This section applies where the Buyer is purchasing products to on sell and either installs the product as part of the sale process or arranges for the product to be installed as part of the sale process.
- b) The buyer acknowledges there are limitations to the FGZ warranty, and the buyer will ensure they are familiar with the exclusions at all times and will not misrepresent the extent of the warranty to any consumers. The buyer undertakes to bring the warranty exclusions to the attention of those to whom the buyer on sells to and the buyer accepts responsibility for any consequential loses as a result of misrepresenting the warranty in any way.
- c) Where the Buyer has installed or arranged for installation of FGZ products and the installation is not completed in accordance with good trade practice and manufacturer's installation recommendations, the Buyer must immediately upon receiving notice of any such defective installation, rectify the defective workmanship.
- d) In the event the Buyer fails within a reasonable period of time to rectify any faulty workmanship, then the Buyer authorises FGZ to engage an alternative installer to rectify the defective works and the Buyer will be responsible for the cost of such rectification.
- e) Where FGZ has had to engage an installer to rectify defective work in accordance with this section, then FGZ is authorised by the Buyer to issue an invoice for that rectification work, and if not paid by its due date, interest and all other charges will apply in accordance with these terms and conditions as if the invoice applied to the purchase of goods from FGZ as set out in these terms and conditions.
- f) The buyer will meet all its obligations under the Consumer Guarantees Act and Fair Trading Act and where a claim has been made against the buyer for breaches of the Consumer Guarantees Act or the Fair Trading Act in relation to buyer's supply of an FGZ product, the buyer must immediately notify FGZ in writing. The buyer must immediately meet their obligations under the Consumer Guarantees Act and/or the Fair Trading Act. Failure to meet their obligations in accordance with the aforesaid Acts within a reasonable period of time may result in FGZ arranging for those obligations to be met and if FGZ takes that action the buyer will be liable for all costs related to their failure to meet their obligations under the aforementioned Acts.

16. USE OF FUJITSU BRAND AND LOGO

- a) Following the granting of a trade account by FGZ, in circumstances where the buyer is purchasing FGZ products to on sell, Fujitsu may authorize the buyer to use the FGZ name and/or logos for the purposes of promotion.
- b) Should the buyer close their trading account or FGZ closes the buyer's trading account then immediately upon such closure;
 - (i) The authority to use the Fujitsu brand and/or logo is withdrawn;
 - (ii) The buyer must immediately and not later than fourteen (14) days from the date of closure of their trading account remove any and all Fujitsu branding from the buyers premises, clothing, signs, hoardings, posters, pamphlets, website, internet search engines and any other medium whatsoever where the buyer has been using or leveraging off FGZ's brand and/or logo;
 - (iii) Failure to remove the FGZ logo and/or brand within the fourteen (14) days referred to in Clause 16(b)(ii) above shall entitle FGZ to recover from the buyer liquidated damages of \$250.00 per day for every day following the fourteen (14) day period that the buyer continues to be in breach of Clause 16(b)(ii) herein;

17. GENERAL

- a) All clerical errors are subject to corrections and shall not bind FGZ.
- b) No employee of FGZ is authorised to bind FGZ unless FGZ has given the Buyer express written notice to that effect.
- c) The invalidity or unenforceability of any provision of these Terms and Conditions shall not affect the validity or enforceability of the remaining provisions.
- d) FGZ's failure to enforce, at any time or any period of time, any term of any contract incorporating these Terms and Conditions shall not constitute a waiver of such term and shall in no way affect FGZ's right to enforce it.
- e) Headings are included for ease of reference and do not form parts of or affect the interpretation of these Terms and Conditions.
- f) These Terms and Conditions bind FGZ, the Buyer and their respective successors and assigns.
- g) FGZ require the original completed credit application form to be delivered to FGZ. In the event the customer faxes or emails and then fails to supply the original to FGZ, and if FGZ approves the account, the Buyer forgoes any possible claim that these terms and conditions are not enforceable against the Buyer on the basis the original is not available.