



Focused IT Solutions Ltd Terms and Conditions of Sale

I. DEFINITIONS

- a. "Conditions" - these terms and conditions
- b. "Customer" - any purchaser or licensee of the Products
- c. "Hardware" - the equipment to be purchased
- d. "Products" - any Hardware or Software sold or licensed by FITS
- e. "FITS" - Focused IT Solutions Ltd
- f. "Software" - the software to be purchased and related materials, updates and enhancements developed by FITS or third parties and supplied by FITS.

2. TITLE TO THE HARDWARE

a. Notwithstanding delivery, installation and acceptance, title to the Hardware shall not pass to the Customer but shall be retained by FITS until full payment for the Products has been received by FITS from the Customer.

b. Until such time as title in the Hardware has passed to the Customer, FITS:

- i. shall have absolute authority to retake, sell or otherwise deal with or dispose of any or part of the Hardware; and
- ii. for the purpose specified in (b)(i) above, FITS or any of its agents or authorised representatives shall with reasonable cause be irrevocably entitled at any time and without notice to enter upon any premises in which the Hardware or any part thereof is installed, stored or kept, or is reasonably believed so to be; and
- iii. shall be entitled to seek a Court injunction to prevent the Customer from selling, transferring or otherwise disposing of the Hardware.

3. HARDWARE WARRANTY

Unless otherwise specified FITS warrants to the Customer that the Hardware supplied hereunder by FITS is free from defects of workmanship and materials for the period set out below which commences on installation by FITS or on delivery of Hardware if not to be installed by FITS. If the Customer delays installation by FITS for more than 30 days from delivery, installation shall be deemed to have occurred on the thirtieth day following delivery. FITS undertakes subject to Paragraphs (c), (d) and (e) below to repair or, at its option, to replace the hardware purchased hereunder which FITS has on inspection found to be defective:

- i. for ninety (90) days in the case of upgrades and spare parts sales;
 - ii. for a minimum of one (1) year and as specified by the manufacturer; and
 - iii. and otherwise for one (1) year provided that FITS may vary the warranty periods and service level at its discretion from time to time as published in the FITS Systems Price List applicable at the time of purchase.
- b. Each claim by the Customer under this warranty shall be notified to FITS within the warranty period specifying the serial number and date of purchase of Hardware and nature of defect. On notification, FITS or its agents or representatives shall have the option of telephone diagnostics and remote resolution. Should further testing, inspection, repair or replacement be required, FITS shall have the option of providing such service on-site at the Customer's location or of having the Hardware returned to FITS or such other address as may be notified to the Customer freight pre-paid. Replacement parts or Hardware shall be sent by FITS to the Customer ordinary freight pre-paid, subject always to (c), (d) and (e) below.
- c. On-site service is only available within the UK mainland and islands connected by road bridges.
- d. In the event of any claim presented under warranty being found on investigation by FITS either to be outside the scope or duration of this warranty or the fault not being confirmed, then the cost of such investigation and repair shall be borne by the Customer.
- e. FITS shall not be liable at any time for damage or defects in the Hardware or parts caused by:

- i. improper use or installation; or
- ii. use of the Hardware outside the specifications detailed in the documentation relating to the Hardware; or
- iii. outside the specific application of the Hardware; or
- iv. where Hardware has been repaired or modified by persons not authorised by FITS.

f. Maintenance options are subject to separate terms and conditions available on request.

4. SOFTWARE LICENCE

a. If the Customer is furnished with a developer's software licence, the same must be signed and returned to FITS within seven (7) days or as otherwise specified in the said licence. In the event that the Customer fails to sign and return the said licence in accordance with this sub-clause:-

- i. FITS reserves the right to withhold release and/or support of the Software.
- ii. If Software has been released to the Customer FITS reserve the right to terminate Software Licence and to receive full payment for the Software.

b. Otherwise, upon delivery of the Software, the Customer will be granted and will accept a non-exclusive, non-transferable licence to use the Software on a single designated system or temporary back up system containing not more than one central processing or master unit ("CPU"), on the terms of these Conditions including the following:

- i. The Customer undertakes not to copy Software in whole or in part other than up to a maximum of three (3) machine readable copies for Customer's internal use on a single designated CPU;
- ii. The Customer undertakes not to reproduce, translate, adapt, vary or modify the Software;
- iii. The Customer undertakes to reproduce and include FITS's or any third party's copyright notice and/or any other legend on each copy of the Software including partial copies and modifications of the Software; and
- iv. The Customer agrees not to reverse assemble or reverse compile the Software in whole or in part except to the extent permitted by law.

c. All copies of the Software in whole or in part are the property of FITS or of others and no title to or ownership of the Software or any unmodified part thereof is hereby transferred to the Customer. Notwithstanding any copyright notice appearing thereon the Software is proprietary and confidential information and Customer agrees not to provide, disclose or make available any Software or part thereof to any third party.

d. The Customer shall grant access to the Software only to those employees whose duties require it and shall take all such reasonable steps to ensure that all such persons are bound by the same obligations as the Customer and in particular shall ensure that in the case of employees such obligations are expressed so as to enure beyond any termination of their employment with the Customer.

e. FITS shall be entitled from time to time during working hours, on giving reasonable notice, to enter on to Customer's premises where Software is installed to verify whether the Customer is complying with these conditions.

5. TERM

This Licence is effective from the date of delivery of Software by FITS and shall remain in effect until it expires or is terminated by the Customer or by FITS provided FITS shall only exercise its right to terminate in the event that continued use or possession of the Software by the Customer infringes rights of the developer or of a third party or if FITS is forced so to do by law or if the Customer is in breach of contract. In the event of such exceptional termination, the Customer shall cease all further use of Software and will certify in writing to FITS that to the best of its knowledge the original and all copies of the Software have been (at the option of FITS) either returned to FITS or destroyed.

6. SOFTWARE WARRANTY

a. In the case of Software produced by FITS ("FITS Software") FITS Software is warranted to conform substantially to its published functional specifications for a period of ninety (90) days from the date of installation. FITS will during the said period, at its own expense, correct any such non-conforming Software provided that the Customer has notified FITS and upon inspection FITS has found the Software to be non-conforming. The Customer's sole and exclusive remedy under this warranty will be limited to such correction. This warranty is subject to the following conditions:

- i. Any modification of the Software by any persons not authorised by FITS shall void this warranty.
- ii. Damage resulting from or aggravated by negligence or misuse is excluded.
- iii. This warranty is subject to the Customer following the procedures (if any) specified by FITS from time to time for fault recording.
- iv. The Customer reporting any faults in the Software within seven (7) days of the fault becoming apparent and co-operating with FITS in carrying out such diagnostic and test routines as FITS may require in accordance with FITS's instructions.
- v. The Customer returning to FITS, if so required by FITS, at its own expense the Software suitably packed.

b. In the case of non FITS software ("Non FITS Software"), FITS will use reasonable endeavours at its own expense to procure that the Customer will have the benefit of any warranty given by a Third Party in respect of non FITS software delivered subject to the Customer complying with the conditions of such warranties.

7. APPLICATION

Unless specifically agreed in writing and authorised by a Director of FITS these Conditions shall supersede all Terms and Conditions of the Customer. These Conditions shall constitute the entire understanding between the parties and (for the avoidance of doubt) acceptance of deliveries of the Products hereunder shall constitute acceptance by the Customer of these Conditions. No liability shall attach to FITS its agents or employees in respect of any representations made or advice given with regard to Products to be supplied unless confirmed in writing and signed by a Director of FITS. FITS shall not be obliged to accept any orders placed by the Customer and FITS shall be under no legal obligation to fulfil any order until such order has been accepted by FITS in accordance with clauses 8 and 23.

8. PRICE

Unless a written quotation has been given (whereupon the price quoted will be fixed for a period of thirty days or such other period as is specified therein) the prices for the Products are subject to alteration without notice and the price charged to the Customer will be that applicable at the date of FITS's acceptance of the order. Orders are not binding upon FITS until accepted by FITS. All prices are exclusive of Value Added Tax (and any similar tax) packing carriage insurance and installation. Where applicable these will be added as separate items on FITS's invoice. FITS shall not be considered to have accepted any order until FITS has commenced delivery of the Product in question.

9. PAYMENT

Unless otherwise notified to the Customer in writing by FITS, the Customer shall pay for Products at the time of order. Alternatively where the Customer is invoiced by FITS on the date of delivery for the Products, the Customer shall pay all invoices within thirty (30) days of the date thereof (time being of the essence). Terms of payment are within FITS's sole discretion and unless otherwise agreed to by FITS, payment may be received by FITS prior to FITS's acceptance of an order in accordance with these terms. FITS reserves the right to charge interest at a rate of 3% per annum above Royal Bank of Scotland base rate ruling from time to time on any payment or any part payment overdue calculated from the date due and to recover its expenses including legal fees and costs of collection and to suspend delivery, performance of any warranty or (at FITS's option) forthwith to determine the same. FITS has no obligation to provide service or support until FITS has received full payment for the Product or services or support that the Customer has purchased.

10. DELIVERY AND INSTALLATION

- a. Dates for delivery of the Products are estimates only and are subject to FITS's availability schedule. FITS shall make every reasonable effort to meet any delivery date(s) acknowledged but shall not be liable for failure to meet such date(s).
- b. Where FITS installs Hardware, FITS shall perform the standard inspection diagnostic checks. For Hardware, designated by FITS as Customer installable the Customer shall be responsible for the installation of Hardware in accordance with instructions provided by FITS.
- c. All deliveries shall be made between 09.00 hours and 17.00 hours ("working hours") Monday to Friday inclusive excluding Public Holidays. If the Customer requires delivery to be made outside such times an additional charge shall be payable. FITS reserves the right to make partial deliveries

11. DAMAGES, SHORTAGES OR LOSS IN TRANSIT

The Customer shall inspect the Products immediately on delivery and FITS will accept responsibility for damages, shortage or loss in transit only if:

- a. Such loss or damage is noted on the consignment note or delivery document upon receipt, and copies provided to FITS or is notified in writing to FITS in cases of outwardly non visible loss or damage to unchecked Products to arrive in either case within five (5) working days from receipt of the Products by the Customer; and
- b. In cases of suspected damage in transit the added packaging is retained for inspection; and
- c. The Products are handled by the Customer in accordance with FITS's or the carriers conditions of carriage or handling stipulations.

Where FITS accepts responsibility under this clause FITS shall at its option replace or repair any Products proved to FITS's satisfaction to have been lost or damaged in transit.

12. ACCEPTANCE OF PRODUCTS

- a. For FITS installed Products, satisfactory completion of FITS's standard test procedure and an Acceptance Form signed by the Customer and FITS will be sufficient to establish acceptance.
- b. If the acceptance Form is not signed by the Customer within seven (7) days after physical installation of the Hardware and in the absence of written notification of valid reasons justifying non acceptance, the Customer shall be deemed to have accepted the Products on the eighth (8th) day.
- c. If installation is not performed by FITS, FITS shall be under no obligation to perform any acceptance test procedures and the date of acceptance shall be the date of delivery to the Customer.

13. PASSING OF RISK

Subject to Clause 8 risk of loss and damage shall pass from FITS to the Customer upon delivery of Products to the Customer or its agent.

14. CONFIDENTIAL INFORMATION

Customer agrees to maintain in confidence and not disclose, reproduce or copy any materials, documentation or specifications which are provided to the Customer hereunder the Customer shall take all reasonable steps to ensure that its employees are bound by the same obligations and that such obligations endure beyond any termination of employment with the Customer.

15. INTELLECTUAL PROPERTY RIGHTS

a. If notified promptly in writing of any action (and all prior claims relating to such action) brought against the Customer, based on a claim that the Customer's use of Products infringes a United Kingdom patent or copyright, FITS will defend such action at its expense and pay the costs and damages awarded, provided that FITS shall have sole control of the defence of any such action and all negotiations for its settlement or compromise. At any time during the course of any litigation arising out of a claim of infringement for a United Kingdom patent or copyright, or if in FITS's opinion, a Product is likely to become the subject of a claim of infringement of a United Kingdom patent or copyright, FITS will at its option and expense either procure for the Customer the right to continue using the Product, replace or modify the same so that it becomes non-infringing, or grant the Customer a credit for the Product as depreciated and accept its return. Depreciation will be an equal amount per year over the lifetime of the Product as established by FITS. FITS will not have any liability to the Customer under any provision of this clause if the infringement or claim thereof is based upon:-

- i. use of Products in combination with other equipment or software not supplied by FITS; or
- ii. the use of Products in carrying out any patented process; or
- iii. infringement as described in (c) below.

b. The foregoing states the entire liability of FITS with respect to infringement of patents or copyrights by Products or any part thereof or by their operation. No costs or expenses will be incurred for the account of FITS without the prior written consent of FITS.

c. The Customer will hold FITS harmless against any expense, judgement or loss of infringement of any patents, copyrights or trademarks which results from FITS's compliance with Customer's designs specifications or instructions.

16. FITS'S LIABILITY

a. Products have been manufactured or developed by FITS or third parties to standard specifications. The Customer accepts that FITS is acting only as a supplier and that it is the Customer's responsibility to verify that the Hardware and Software will be suitable for its own requirements. There are no warranties, conditions, guarantees or representations as to description merchantability or fitness for a particular purpose or other warranties, conditions, guarantees or representations whether express implied by statute or otherwise oral or in writing except as provided herein and except as to statute implied terms as to title.

b. Notwithstanding (a) above the remedies set out in this Agreement do not apply to consumer transactions except in so far as they add to Customer's rights implied by statute. In relation to such transactions the rights and obligations of FITS and the Customer in respect of defects in any Products supplied by FITS to the Customer under this agreement, the fitness for any particular purpose of such Products and the correspondence of such Products with any description or sample shall be determined by the Terms and Conditions implied by Statute.

c. Notwithstanding (a) and (b) above all rights which the Customer may have under the Consumer Protection Act 1987 and the Consumer Protection (Distance Selling) Regulations 2000 are in addition to those set out in this Agreement.

d. If FITS is unable other than through the act or default of the Customer within a reasonable time to replace or repair the defective Hardware or correct non-conforming Software in accordance with the warranty set forth herein and where the Hardware or Software in question is totally unusable due to the defect or non-conformity the Customer may reject it and upon its return to FITS's premises is entitled to recover the purchase price of the Hardware or the licence fee for the Software as appropriate.

e. FITS shall be liable for death or personal injury arising from the use of Products to the extent that it results from the negligence of FITS or its employees. FITS shall also be liable to the Customer for any other direct loss of or damage to tangible property caused solely by the negligence of FITS or its employees subject always to the maximum aggregate liability of FITS under this Agreement or in connection with the supply of any products or services under it, whether in respect of contract, tort or otherwise in relation to any successful claim made on FITS by the Customer not exceeding the amount received by FITS from the Customer in respect of sale of the products and services to which the claim relates.

f. The Customer agrees that FITS will not be liable for any loss arising out of the provision of goods or services by any company organisational person other than FITS or for any loss caused by the Customer's failure to perform his obligations in relation to this agreement.

g. FITS shall not in any event be liable for any indirect, special or consequential loss, howsoever arising (including but not limited to loss of anticipated profits or of data) in connection with or arising out of the supply, functioning or use of the Hardware or the Software even if FITS shall have been advised of the possibility of such potential loss and shall not be liable for any loss except as provided for in this agreement.

h. Except in respect of the liability of FITS for death or personal injury resulting from the negligence of FITS or its employees or a claim under (b) or (c) above or in respect for a claim for non-payment of monies due under this agreement

no action regardless of form arising out of the transactions in relation to this agreement may be brought by either party more than 2 years after the cause of action has accrued.

17. EXPORT CONTROL

Under regulations governing United Kingdom trade and by virtue of its agreements with suppliers, FITS requires to be pre-notified of shipments outside the United Kingdom. Customer is required to obtain all necessary licences prior to export. Delivery of Products is subject to all such authorisations being available at the time of delivery. FITS will provide guidance and required data or at its option seek to obtain the relevant licences on behalf of the end user.

18. SPECIFICATIONS

FITS reserves the right to change specifications of Products at any time and without notice and to supply Hardware and/or Software which differs from the specifications agreed between FITS and Customer provided that such substitutions do not materially affect the performance of the Products.

19. TERMINATION

a. FITS shall have the right, without prejudice to any other remedies, at any time by giving notice in writing to the Customer to terminate forthwith this agreement, including any Software licence in any of the following events:-

- i. if the Customer fails to pay any sums to FITS on the due date of payment; or
- ii. if the Customer commits any other breach of any of the Conditions provided that if the breach in question is one which the Customer can effectively remedy then the said notice of termination shall not be effective to terminate this agreement unless the Customer fails within thirty (30) days of the date of such notice effectively to remedy the breach complained of; or
- iii. if the Customer ceases to carry on business or substantial part thereof, commits an act of bankruptcy or is adjudicated bankrupt or enters into liquidation whether compulsory or voluntary other than for the purposes of amalgamation reconstruction or compounds with its creditors generally or has a receiver or manager appointed over all or any part of its assets or suffers execution or distress or takes or suffers any similar action in consequence of debt or becomes unable to pay its debts as they fall due.

20. MISCELLANEOUS

a. Neither party shall be liable to the other for any delay in or failure to perform its obligations hereunder (other than a payment of money) provided that such a failure is due to causes beyond its reasonable control.

b. Failure by FITS to exercise or delay exercising any of these Conditions shall not constitute or be deemed to be a waiver of FITS's rights hereunder nor prejudice FITS's rights to take subsequent action.

c. The headings in these Conditions are inserted for convenience only and are not intended to be part of or to affect the meaning or interpretation of these Conditions.

d. The invalidity or unenforceability for any reason of any part of these Conditions shall not prejudice the continuation in force of the remainder thereof.

e. The Agreement set out in these Conditions shall not be assigned by the Customer without the prior written consent of FITS. Any such attempt to assign shall be void.

f. Any notice required to be given under these Conditions shall be in writing and shall be sent to the address of the Customer set out in each sales order (for notices to be sent to the Customer) or the registered office of FITS (for notices sent to FITS).

g. Where the customer comprises two or more persons their liability and obligations to FITS shall be joint and several.

21. RIGHTS OF THIRD PARTIES

Both parties expressly agree to waive any rights that they may have under the Contracts (Rights of Third Parties) Act 1999 to bring a claim in respect of any other agreement entered into between the parties to this Agreement in relation to the subject matter of this Agreement and that any third party mentioned in this Agreement either specifically or by implication shall be expressly excluded from bringing a claim under the said Act.

22. DATA PROTECTION

The information that you provide about your company to FITS will be used by FITS for the effective administration of its services and to communicate with you generally. Your details will only be disclosed outside of FITS to FITS's partners who help in the delivery of those services.

23. ELECTRONIC ORDERING

- a. FITS agrees to accept orders from the Customer in any electronic format agreed in advance by FITS and the Customer and posted by FITS on FITS's web site.
- b. The Customer shall complete and issue the electronic purchase order to FITS.
- c. FITS shall not be considered to have accepted any electronic purchase order until FITS has commenced delivery of the Product in question. In particular but without limitation to the generality of the foregoing, the generation of any automatic e-mail responses shall not constitute such acceptance of the order.
- d. In the event that either FITS or the Customer suffers a systems failure which disrupts the sending and receipt of electronic purchase orders, then, until the systems failure is rectified, orders will be sent and received by fax.

24. GOVERNING LAW

These Conditions shall be governed by and construed in all respects in accordance with the laws of Scotland and both the Customer and FITS hereby agree to the exclusive jurisdiction of the Scottish Courts in the event of any dispute in relation thereto.

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