

# FT Technologies - Terms & Conditions of Sale

## 1 GENERAL

FT Technologies Limited, of Church Lane Teddington Middlesex TW11 8PA, (registered company number 01603909) ("FT") submits all quotations and price lists and accepts all orders subject to the following terms and conditions which shall apply to all orders for goods supplied or work done by FT and no terms of the purchaser entering into this agreement (the "Purchaser") shall apply or have any effect, whether such terms appear on a written order or otherwise. The terms contained or referred to in this document are all the terms of the agreement (the "Agreement") between FT and the Purchaser in respect of the goods and/or services to be supplied, and these terms supersede all previous representations, negotiations, arrangements and agreements.

## 2 QUOTATION AND ACCEPTANCE OF ORDERS

2.1 All orders made by the Purchaser must be in writing, by telex, or fax.  
2.2 Each order accepted by FT will be deemed to form a separate Agreement of which these terms of sale shall apply and any waiver or any act of non-enforcement or variation of any term or part thereof on the part of FT shall not bind or prejudice FT in relation to the application of these terms to any other order, instalment or delivery whensoever arising.

## 3 PRICES AND QUOTATIONS

3.1 Where no written quotation is given to the Purchaser by FT, the price of goods or services ordered shall be in accordance with FT's current price list ruling at the date of delivery subject to clause 3.3 below.  
3.2 Where FT gives a written quotation, the price shall be in accordance with that quotation for orders accepted within the validity period of that quotation, subject to clause 3.3 below.  
3.3 FT reserves the right to increase prices without notice, after the date of FT's acceptance of an order to cover:  
3.3.1 increased charges of the suppliers to FT (whether in respect of goods or services);  
3.3.2 extra costs incurred as a result of the cancellation, alteration or re-scheduling of orders due to the Purchaser's instructions or lack of instructions;  
3.3.3 currency fluctuations which increase the cost to FT of materials or goods imported into United Kingdom.  
3.4 All prices are exclusive of Value Added Tax and any other taxes, duties or levies that may be due and are ex-works FT's premises (as defined by INCOTERMS 2000 Edition). All goods are supplied UK import duty paid, which sum will be added to the price of the goods quoted. Evidence of duty payment cannot be supplied unless agreed in writing by FT before order placement.  
3.5 The terms of payment are 30 days net after delivery of goods (unless expressly agreed otherwise) and liability to pay the price and related charges for the goods shall arise on their despatch to the Purchaser. Payment shall be due whether or not property in the goods has passed to Purchaser by virtue of clause 5 below and FT shall accordingly be entitled to sue for the price even if property in the goods has not passed. Time of payment is of the essence.  
3.6 FT reserves the right to charge interest on the outstanding amount at the National Westminster Bank plc base rate from time to time, plus 2%, from the date payment become due until payment in full is made.

## 4 DELIVERY

4.1 All delivery dates are quoted in good faith, but time of delivery shall not be of the essence of any order. FT shall be entitled to deliver by instalments. FT shall not be liable for any loss or damage (whether direct or consequential) whatsoever arising from late or non-delivery of goods or materials and the Purchaser shall not thereby be entitled to treat any order as repudiated.  
4.2 Delivery shall take place when the goods arrive at the Purchaser's premises, whether or not delivery is accepted by Purchaser, and all risk in the goods shall pass to the Purchaser at that time.  
4.3 No liability can be accepted by FT in respect of damage to or short delivery of goods unless a notice in writing is given to the carrier concerned, and separately to FT, giving full details, within 14 days of date of invoice or delivery, if earlier. In the absence of such notice, the goods shall be deemed conclusively to have been duly delivered. FT shall have no liability in respect of damage or short deliveries caused by the acts or omissions of the Purchaser or any third party or by causes beyond FT's reasonable control.  
4.4 The Purchaser must accept delivery of the total order within one year of the date of the order, unless otherwise agreed in writing.

## 5 RISK AND RESERVATION OF TITLE

5.1 The goods are at the risk of the Purchaser from the time of delivery.  
5.2 Ownership of the goods shall not pass to the Purchaser until FT has received in full (in cash or cleared funds) all sums due to it in respect of:  
5.2.1 the goods; and  
5.2.2 all other sums which are or which become due to FT from the Purchaser on any account.  
5.3 Until ownership of the goods has passed to the Purchaser, the Purchaser shall:  
5.3.1 hold the goods on a fiduciary basis as FT's bailee;  
5.3.2 store the goods (at no cost to FT) separately from all other goods of the Purchaser or any third party in such a way that they remain readily identifiable as FT's property;  
5.3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the goods; and  
5.3.4 maintain the goods in satisfactory condition and keep them insured on FT's behalf for their full price against all risks to the reasonable satisfaction of FT. On request the Purchaser shall produce the policy of insurance to FT.  
5.4 The Purchaser may resell the goods before ownership has passed to it solely on the following conditions:  
5.4.1 any sale shall be effected in the ordinary course of the Purchaser's business at full market value; and  
5.4.2 any such sale shall be a sale of FT's property on the Purchaser's own behalf and the Purchaser shall deal as principal when making such a sale.  
5.5 The Purchaser's right to possession of the goods shall terminate immediately if:  
5.5.1 the Purchaser has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Purchaser or notice of intention to appoint an administrator is given by the Purchaser or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding up of the Purchaser or for the granting of an administration order in respect of the Purchaser, or any proceedings are commenced relating to the insolvency or possible insolvency of the Purchaser; or  
5.5.2 the Purchaser suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the Contract or any other contract between FT and the Purchaser, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Purchaser ceases to trade; or  
5.5.3 the Purchaser encumbers or in any way charges any of the goods.  
5.6 FT shall be entitled to recover payment for the goods notwithstanding that ownership of any of the goods has not passed from FT.

5.7 The Purchaser grants FT, its agents and employees an irrevocable licence at any time to enter any premises where the goods are or may be stored in order to inspect them, or, where the Purchaser's right to possession has terminated, to recover them.  
5.8 Where FT is unable to determine whether any goods are the goods in respect of which the Purchaser's right to possession has terminated, the Purchaser shall be deemed to have sold all goods of the kind sold by FT to the Purchaser in the order in which they were invoiced to the Purchaser.  
5.9 On termination of the Agreement, howsoever caused, FT's (but not the Purchaser's) rights contained in this clause 5 shall remain in effect.

## 6 SPECIFICATIONS, DESCRIPTIONS, TOLERANCES AND SAMPLES

6.1 No information, statistics or specifications relating to dimensions, outputs, capacities, strengths, weights, performances and/or similar data and no photograph, illustration, drawing or plan whether issued by FT or not shall be deemed to relate to the goods which are the subject of this order unless FT has specifically confirmed that this is the case in writing.  
6.2 If FT manufactures the goods to be supplied in accordance with any agreed specifications FT shall be entitled to claim reasonable tolerances in respect of the goods supplied and reserves the right to make adaptations to the goods due to technical or safety developments.  
6.3 The provision by FT of samples for analysis by the Purchaser or the inspection of samples by the Purchaser shall not render any sale a sale by sample. No guarantee or warranty is given that the goods supplied will correspond exactly to the description or sample given.

## 7 SPECIFICATIONS, INSTRUCTIONS AND MATERIALS SUPPLIED BY THE PURCHASER

7.1 Any materials or other properties supplied by the Purchaser to FT for the purposes of filling any order shall be held by FT at the risk of the Purchaser and the Purchaser shall remain responsible for the insurance of those items. FT shall accept no liability for defects in the goods caused directly or indirectly by any such materials or property supplied.  
7.2 Any design or express or implied instructions directly or indirectly communicated by the Purchaser to FT shall not be such as to cause or require FT to infringe any copyright, patent rights, registered design, trade or service mark or other third party rights in the performance of that order.  
7.3 The Purchaser will indemnify and keep indemnified FT, its directors, officers, servants, agents and sub-contractors against all costs, losses, expenses and liabilities howsoever arising:  
7.3.1 in respect of any actual or alleged infringement of any third party rights arising directly or indirectly from the use of or compliance with any design, specification or express or implied instructions communicated by the Purchaser in connection with this order; and  
7.3.2 in respect of any claim arising from the sale or use of the goods supplied or otherwise in connection with those goods where the claim results wholly or partly from any of the materials supplied by the Purchaser; and  
7.3.3 as a result of any use by the Purchaser or any third party of the goods supplied, where the use made of those goods is not recommended, or recognised as a normal use of those goods by FT or in any case where the goods have been manufactured in accordance with the Purchaser's specifications.

## 8 OWNERSHIP OF INTELLECTUAL PROPERTY RIGHTS

8.1 FT has no actual knowledge of any infringement of patent, copyright or other intellectual property rights likely to result from the manufacturing, sale or use of the goods supplied, but FT shall bear no liability for the infringement of any patent, copyright or other intellectual property rights caused by the use of the goods supplied in combination with any other articles or materials or in any process not supplied by FT.  
8.2 The Purchaser acknowledges that except as provided for in clause 8.3 below, all patent, copyright, registered design or other intellectual property rights arising in the goods supplied, manufacturing techniques, processes and equipment or design, ideas, inventions or development work undertaken by FT remain the property of FT who has the sole right to seek patent, registered design or other protection.  
8.3 Where the goods supplied are manufactured by FT in accordance with specifications supplied by the Purchaser FT acknowledges that all rights in inventions, and copyright in designs supplied by the Purchaser shall be the property of the Purchaser and the Purchaser shall have the sole right to seek patent, registered design or other protection for them. For the avoidance of doubt, nothing in this clause 8 shall affect FT's rights in any of its manufacturing techniques, processes or equipment which have not been specifically invented by the Purchaser, nor FT's rights to use such techniques, processes or equipment in producing goods other than on the behalf Purchaser.

## 9 CONFIDENTIALITY

9.1 Except in the case of FT's documents which are publicly available, all catalogues, manuals, specifications, models, drawings, technical information or other data material or documentation of any kind furnished by FT to the Purchaser will remain the property of FT (whether or not commissioned by the Purchaser) and will be kept strictly confidential by the Purchaser and returned at FT's request.  
9.2 Each party will keep the business information of the other which is not publicly known strictly confidential and will not use or disclose that information except as necessary to allow the performance of their obligations under this order.

## 10 EXPORT AND IMPORT LICENCES

The Purchaser will not sell or ship any of the goods directly to any person or destination where such sale or shipment would be prohibited by the laws or regulations of the United Kingdom and, at its own expense, the Purchaser shall secure such licences and import and export documents as are necessary to buy or sell the goods.

## 11 QUALITY

FT warrants that for a period of 12 months from the date of delivery to the Purchaser, all goods manufactured by it shall be reasonably free from defects in materials and workmanship at the time of their delivery to the Purchaser.

## 12 NOTIFICATION AND REMEDIAL ACTION OF DEFECTS

12.1 The following provisions of this clause 12 set out the Purchaser's sole remedy and FT's sole liability in respect of any goods which do not comply with the warranties given in clause 11. (Such goods are "Defective", and the non-compliance is defined as a "Defect").  
12.2 The Purchaser shall promptly notify FT of any Defect.  
12.3 The Purchaser shall (at its own expense, subject to clause 12.4.1(c)) promptly return to FT the Defective goods, and FT shall as soon as reasonably practicable carry out an inspection of the goods to determine whether the goods are Defective. In carrying out that inspection, FT shall act reasonably and with all due care and skill.  
12.4 If FT determines that the goods are Defective then:  
12.4.1 FT shall at its option:  
(a) promptly supply at its own expense replacement goods; or  
(b) repair the Defective goods and return it to the Purchaser as soon as reasonably practicable; and  
(c) FT shall reimburse the Purchaser for the reasonable direct expenses of shipping the goods back to FT.  
12.5 If FT determines that the goods are not Defective (and that consequently the Defect has been misreported by the Purchaser), then:  
12.5.1 FT shall give the Purchaser full particulars of its determination that the goods are not Defective, or that the Defect has been caused by incorrect use;

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- 12.5.2 the Purchaser shall not be entitled to a replacement goods or to any reimbursement of its costs of shipping the goods back to FT; and
- 12.5.3 the Purchaser shall pay the costs of the inspection carried out under clause 12.3, calculated at FT's standard service rates then in force.

## 13 LIMITATIONS OF WARRANTIES

- 13.1 Whilst FT endeavours to ensure the best design, sound materials and good workmanship, all conditions and warranties whether express or implied by statute or otherwise (including but not limited to those as to description, merchantability, compliance with any sample or fitness for purpose of the goods) shall be construed subject to these conditions and, insofar as they are inconsistent with these conditions shall be excluded.
- 13.2 The warranty given in clause 11 shall not in any event extend to any articles which are not of FT's own manufacture, but which have been supplied with or incorporated into FT's goods and the Purchaser shall in respect of such articles rely on such warrants, if any, as is given in respect of those articles by their manufacturer.
- 13.3 The warranty given in clause 11 shall only apply provided that the goods have been used in accordance with FT's recommendations (if any) or in accordance with their normal use and shall not apply where damage is caused by: accident, normal wear and tear, any misuse of the goods by the Purchaser or any person, failure to follow any instructions supplied with the goods, deterioration due to inadequate storage facilities; or where defects in the goods are caused directly or indirectly by materials, designs or property supplied or specified by the Purchaser, or where the goods have been altered, modified or repaired other than at FT's premises or by persons not expressly nominated or approved in writing by FT.
- 13.4 FT gives no representation, condition, warranty or other assurance, nor does it accept any duty of care that the goods supplied are fit for any particular purpose for which the person may require them. The Purchaser acknowledges that it has assessed for itself the suitability of the goods or services for its requirements and that it is solely responsible for:
- 13.4.1 the proper installation and operation of the goods in accordance with the documentation provided by FT, with reasonable care and skill using appropriately skilled and qualified personnel;
- 13.4.2 ensuring that it employs monitoring systems and "fail-safe" systems sufficient to ensure that any defect in or failure of the goods does not cause damage to any other goods or property of the Purchaser or of any other person, and that any other consequential effects of any such defect or failure are minimised.
- 13.5 The warranties and conditions stated in this Agreement are in place of all other warranties, conditions or other terms, whether express or implied, statutory or otherwise, all of which are expressly excluded.

## 14 CANCELLATION, SUSPENSION AND TERMINATION

- 14.1 In the event of an order which has been accepted by FT being cancelled by the Purchaser, this shall amount to a repudiation of that contract, which FT may accept, and in these circumstances the Purchaser shall be liable to indemnify FT against all losses (including loss of profit) costs and other expenses and damages (whether direct or consequential) occasioned by such cancellation.
- 14.2 If:
- 14.2.1 the Purchaser fails to comply with any of its obligations under this or any contract; or
- 14.2.2 in the case of an individual, if a petition for a bankruptcy order or an application for a voluntary arrangement is made in respect of the Purchaser or any similar action application or proceeding is taken against the Purchaser in any jurisdiction to which he is subject or the Purchaser is unable to pay his debts within the meaning of s.268 of the Insolvency Act 1986; or
- 14.2.3 in the case of a limited company, if any action, application or proceeding is taken in respect of the Purchaser for:
- (a) a voluntary arrangement or composition or reconstruction of its debts; or
- (b) the presentation of an administration petition; or
- (c) its winding up or dissolution; or
- (d) the appointment of a liquidator, trustee, receiver, administrative receiver or similar officer; or
- (e) if any similar action application or proceeding is taken in any jurisdiction to which the Purchaser is subject, or the Purchaser is unable to pay its debts within the meaning of s.123 of the Insolvency Act 1986 FT shall have the right to terminate this order, and any other orders or agreements with the Purchaser, or to suspend performance of this order or any other order or part of it, but without affecting any other claim right or remedy of FT against the Purchaser.
- 14.3 FT reserves the right to cease or suspend the supply of goods to the Purchaser in its absolute discretion when:
- 14.3.1 the Purchaser's account is overdue; or
- 14.3.2 in FT's absolute discretion FT has doubts, howsoever arising, about the continued creditworthiness of the Purchaser.
- 14.4 Should FT be prevented from making delivery or performing any other of its obligations under an order, owing to any circumstances beyond its reasonable control, including but not limited to earthquake, flood, hurricane, fire, acts of God, war, national emergency, invasion, insurrection, riots, lock-outs, industrial action, picketing, boycott, difficulty in obtaining workmen or materials, breakdown of machinery, or interference or requisitioning by any government department or official, FT may by written notice terminate that order or suspend performance without incurring any liability for any loss or damage incurred by the Purchaser.

## 15 LIMITATIONS ON LIABILITY

- 15.1 Nothing in this Agreement shall limit FT's liability for
- 15.1.1 personal injury or death caused by its negligence; or
- 15.1.2 fraudulent misrepresentation.
- 15.2 FT shall have no liability in contract, tort (including, without limitation, negligence or misrepresentation) or otherwise howsoever for any loss or damage arising in whole or in part from:
- 15.2.1 materials provided by, or a design stipulated or specified by the Purchaser;
- 15.2.2 overload conditions, faulty maintenance, faulty installation and modifications made without FT's approval; or
- 15.2.3 any breach by the Purchaser of its obligations under clause 13.1.
- 15.3 FT's liability to the Purchaser, in contract, tort (including, without limitation, negligence or misrepresentation) or otherwise for loss or damage to any tangible property, caused either (1) by defects in the goods resulting from FT's negligence or (2) by the negligence of FT's employees shall be limited to a maximum amount of £2,000,000 per event or series of connected events.
- 15.4 Subject to clause 15.1, FT shall have no liability in contract, tort (including, without limitation, negligence or misrepresentation) or otherwise howsoever for any of the following losses or damage (whether such losses or damage were foreseen, foreseeable, known or otherwise):
- 15.4.1 loss of revenue, loss of actual or anticipated profits (including for loss of profits on contracts), loss of the use of money, loss of anticipated savings, loss of business, loss of opportunity, loss of goodwill, loss of reputation, loss of, damage to or corruption of data;
- 15.4.2 death, illness, injury or loss of value to any animals, birds or fish; or
- 15.4.3 any indirect or consequential loss or damage howsoever caused (including, for the avoidance of doubt, whether or not such loss or damage is of a type specified in clauses 15.4.1 and 15.4.2 above) whether arising out of, in connection with or in relation to the goods or the supply or non-supply of the goods or otherwise under this Agreement.
- 15.5 Subject to clauses 15.1 to 15.4 above, FT's total liability in contract, tort (including, without limitation, negligence or misrepresentation) or otherwise whether arising out of, in connection with or in relation to the goods or the supply or non-supply of the goods or otherwise under this Agreement for any one event or series of connected events shall be limited to the higher of (i) £25,000 and (ii) the amount payable to the Purchaser for the goods under the corresponding Agreement.

- 15.6 The parties agree that the above limitations of liability are reasonable, particularly in the light of the Purchaser's obligations under clause 13.4 (in particular, without limitation, clause 13.4.2), and appropriately reflect the balance of risk which the parties consider appropriate and which is reflected in the prices charged by FT. In addition, the cost of obtaining unlimited insurance for all goods supplied is excessive and would result in an increase in the price of the goods supplied and prices are quoted on the basis that the Purchaser takes out its own insurance.

## 16 CUMULATION OF REMEDIES

The rights and remedies granted to FT in these terms may be exercised by FT in addition to each other, and also in addition to any other rights or remedies that may be available to FT by statute, common-law or otherwise.

## 17 VARIATIONS

FT reserves the right to vary these standard terms from time to time, provided that any variation that arises following acceptance of the Purchaser's order and prior to the performance of FT's obligations under that order shall be notified to the Purchaser in writing, and shall not take effect until that time.

## 18 NON-ASSIGNMENT

The Purchaser shall not be entitled to assign, sub-licence, sub-contract or otherwise dispose of its rights and obligations under any order without first obtaining the prior written consent of FT.

## 19 NOTICES

Notices required to be given under these terms shall not be effective unless in writing and sent to the address of the other party or at such other address as previously notified to the other party in writing.

## 20 SURVIVING PROVISIONS

The determination of each order howsoever arising shall be without prejudice to any provisions of the contract (including these conditions) which are to have effect after the date of determination.

## 21 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

None of the provisions of this Agreement are intended to or will operate to confer any benefit under the Contracts (Rights of Third Parties) Act 1999 on a person other than FT or the Purchaser.

## 22 HEADINGS

The headings to these terms are for convenience only and shall not affect the interpretation or construction of any of them.

## 23 PROPER LAW

This Agreement shall be governed by English law and the parties hereby submit to the non-exclusive jurisdiction of the English courts for the determination of any question or dispute arising under or in connection with this Agreement.