

TERMS & CONDITIONS OF SALES & SERVICES UK – revised June 2019

This document (“**Conditions**”) together with the (1) **Services Descriptions** &/or (2) **Products Descriptions** & (3) **pricing** applicable to the **Products** &/or **Services** that you are buying together form the whole “**Agreement**” between Foster’s Computer Services Limited (“**FCSL**”) and you (“**Customer**”) and prevail in this order in case of conflict.

1. Definitions

CFI: Custom Factory Integration: a Service combining Customer specified software & hardware with Product(s) at the time of manufacture which may include image & applications loading & maintenance, software integration, hardware integration &/or asset management services;

Description: a document forming part of the Agreement which describes a Product or Service;

FCSL: “Foster’s Computer Services Ltd”: the supplier;

IM: “Integration Material”: third party product(s) specified or provided by Customer within the scope of CFI;

IPR: “Intellectual Property Rights”, patents, trade marks, registered designs, & applications for same, copyright, design rights, know-how, trade & business names & any other similar protected rights in any country;

Order: request by Customer to purchase Product or Services from FCSL;

Order Confirmation: written acceptance by FCSL of Customer’s Order;

Price: the charge for Products &/or Services payable by Customer to FCSL;

Products: an individual good (including Software) as described in any current document published by FCSL physically &/or on its internet site, or in any Order Confirmation & which Customer buys or agrees to buy from FCSL but excluding items added to FCSL hardware through CFI;

Services: service & support (including CFI) carried out by for or FCSL in accordance with the Service Offering;

Service Offering(s): the Service options offered by FCSL as described in any current document published by FCSL physically &/or on its internet site, or in any Order Confirmation;

Software: computer operating systems, middleware, applications or other software that is manufactured or owned by, or licensed by, FCSL;

Third Party Products: products not manufactured, assembled or authorised by FCSL that FCSL sells (i.e. products that do not carry the ‘FCSL’ brand such as sound cards, speakers and certain external devices and accessories).

Third Party Software: computer operating systems, middleware, applications or other software from a third party editor or licensor.

WEEE Regulations means Waste Electrical & Electronic Equipment Regulations 2006

2. Quotations/Orders and Changes

2.1 FCSL quotations are valid only if in writing & for 10 days after the quotation date, unless otherwise stated in the quotation.

2.2 All Orders for Products &/or Services shall be regarded as an offer by Customer to purchase Products &/or Services under the terms of this Agreement and not under any other terms stated on such Orders.

2.3 FCSL accepts Customer’s offer to purchase under this Agreement & makes a binding Agreement by issuing an Order Confirmation or delivering the relevant Products &/or Services. It is recommended that Customer review the Order Confirmation & notify FCSL within a reasonable period of time of any discrepancies that are noticed.

2.4 FCSL reserves the right to make changes to ordered specifications but will identify any such changes in the Order Confirmation. FCSL guarantees that any such changed Products or Services will offer at least equivalent functionality & performance. FCSL will not make any significant variations to Products or Services without Customer’s prior agreement &, except as provided for above, will manufacture & deliver Product or Services in accordance with the Order Confirmation.

3. Price and Payment

3.1 The Price that Customer has to pay will be shown on FCSL's Order Confirmation and invoices. The cost of freight, insurance, import or export, duties or other associated costs such as delivery, sales, value add, excise taxes shall be added unless already specified as included in the Price.

3.2 Customer must pay within 14 days of the date of invoice. FCSL may suspend delivery of Product &/or Service until full payment is received. If full payment is not received FCSL will be entitled to charge interest on the amount outstanding at the rate of 8% per annum above the Bank of England base rate. If FCSL must recover the outstanding payment &/or Product, recovery costs are to be paid by Customer.

3.3 For Orders to be delivered in instalments over a period of time, FCSL may adjust prices due to changes to exchange rates, duties, insurance, freight, handling & purchase costs.

4. Delivery of Products

The delivery date specified in the Order Confirmation is an estimate. The place of delivery is as stated in the Order Confirmation. For practical reasons, Products may be delivered by instalments, which shall be communicated to Customer.

5. Passing of Ownership & Risk in Products

Ownership of Products passes to Customer on the receipt by FCSL of full payment for the Product. FCSL may recover any Products supplied at any time prior to ownership passing if Customer is in breach of these Conditions.

Risk passes to Customer on delivery of Products to Customer or to their representative.

6. Acceptance of Products on Delivery

6.1 Notwithstanding anything herein to the contrary, Customers may only reject Products for material non-conformity with the Products Description by providing written notice to FCSL within 7 days after delivery or otherwise customer shall be deemed to have accepted the Products.

6.2 Customer shall notify FCSL promptly

a) following delivery of any missing, incorrectly delivered, incorrect specification, or otherwise not as ordered Products or Products which are either in damaged packaging or are visibly damaged; and

b) following discovery of any non-visible damage or defect in Product supplied.

6.3 Where Products can be returned to FCSL by Customer under the terms of this Agreement, it should either be returned to FCSL or be made available for collection at a time which is mutually convenient insofar as possible. Customers should act reasonably in complying with a request by FCSL to collect Product at a particular time.

7. Statutory Rights, Warranties, Repairs, Replacements & Provision of Services

A. Products:

7.1 FCSL will, within a reasonable time of having been notified of the defect, repair &/or replace materially defective Products containing the FCSL brand (at FCSL's option) during the 12 month period post delivery or for such longer period as is detailed in the applicable Service Offering. In respect of any non FCSL branded Products sold to Customer by FCSL, FCSL shall pass on any such third party warranty in as far as is possible. Notebook batteries are delivered with a maximum one-year warranty unless a shorter period is stated in the applicable Service Offering. This warranty is not upgradeable.

7.2 These obligations are dependent upon proper use of Products & do not cover any parts of Products which have been modified or repaired without FCSL's prior written consent. FCSL may ask third party Software licensors to fulfil FCSL's and/or licensor's legal obligations relating to the supply of that licensor's software.

7.3 FCSL's obligations do not apply to the consumable components of consumable items (such as toner in printer cartridges) or if a defect is caused by an external cause such as fair wear & tear, software or hardware loaded onto or connected to Product by Customer where this software or hardware has not been supplied by FCSL, an accident, hazard, humidity control, electrical stress or other environmental conditions not commonly found in a safe home or office environment.

7.4 Parts not critical to Product function, including but not limited to hinges, doors, cosmetic features, and frames, are not serviced &/or repaired or replaced.

7.5 If FCSL makes repairs to Products under Service Offerings it does so by using components which are new or equivalent to new in accordance with industry standards and practice. Certain repairs or replacements may be carried out by Customer under instruction by FCSL. Replaced or

repaired parts carry the relevant Service Offering warranty until the end of the original warranty period as described in the Services Offering.

7.6 If Customer does not return removed parts FCSL then may charge a fee of which Customer will be informed prior to charge. The fee will reflect the cost incurred by FCSL in retrieving the part(s), &/or the cost of procuring another component to recondition &/or arising from failure to comply with environmental obligations as a result of the Customer's failure to return the Product or part.

B. Services:

7.7 FCSL shall carry out the Services using reasonable skill and care. FCSL's obligations under its Service Offerings are further as stated in the Descriptions for those Service Offerings. FCSL will use all reasonable endeavours to meet response times estimated in the Service Offerings, but actual timings may vary depending, among other factors, on the remoteness or accessibility of Customer's location, weather conditions & availability of components.

7.8 Notwithstanding the above, the following are excluded from Services unless stated otherwise in the Service Offering: local working hours, relocation, removal of non-FCSL supplied hardware or software, preventative maintenance, repairs to Products that are functioning within industry standards including without limitation defective pixels on monitors, transfer of data or Software and viruses. Customer is responsible for removal of non-FCSL supplied products.

7.9 FCSL does not provide FCSL Service Offerings for Third Party manufactured Software or Products but will pass to Customers, to the extent that it is permitted to do so, the benefit of any warranty or guarantee given by the manufacturer or supplier of Third Party Products.

7.10 Service may be provided via telephone (at the normal national rate) or Internet where appropriate. Additional optional value added Services may be offered using Premium Rated Services. Any such Services will be clearly identified & will be provided in compliance with relevant regulations and codes applying to provision and use of Premium Rated Services. Telephone calls may be recorded for training purposes.

7.11 Customer must provide FCSL with all reasonable courtesy, information & cooperation to enable FCSL to deliver the Services & shall be responsible for all telephone & postal charges in contacting FCSL.

7.12 FCSL owns any Product or parts that are removed during repair. FCSL may require Customer to return removed parts to FCSL for reconditioning, analysis or for environmental reasons.

7.13 Products, Software & Services sold will correspond to their Description (except as stated in Term 2.4 above). **Customer must satisfy themselves as to the suitability of the Description for their needs. FCSL does not warrant fitness for any particular purpose.**

7.14 Customers are not automatically entitled to repair or replacement other than as described in a Service Description or as otherwise agreed by FCSL. FCSL shall have no liability or obligation for defects in Products or failure to remedy defects except as expressly provided under this Agreement.

7.15 Except as expressly provided herein or in any applicable Services Offering, no warranty, express or implied, as to the condition, quality, performance, merchantability, or durability of Products is given or assumed by FCSL & all such warranties are hereby excluded to the extent possible under applicable law.

8. Custom Factory Integration (CFI)

CFI may be provided at the discretion of FCSL in accordance with Customer's instructions & technical specifications & subject to current FCSL requirements. Customer will specify & provide IM or FCSL may obtain IM at Customer's instruction. FCSL will indicate acceptance &/or validation of IM & then will integrate IM into Product(s), producing a CFI Product. FCSL may install CFI Product under Customer's instruction or under FCSL technical advice, if agreed in writing. FCSL will not carry out CFI work if not technically feasible. FCSL shall not warrant the functionality or provide support for IM in any case. Customer hereby indemnifies FCSL for any losses howsoever arising to the extent they relate to IM or IPR specified, provided by or owned by Customer and integrated into Products.

9. Force Majeure

9.1 Neither party is responsible for non-performance in case of circumstances beyond its reasonable control (“**Force Majeure**”) including without limitation, strikes by non FCSL employees, terrorist acts, war, exchange fluctuations, governmental or regulatory actions, natural disasters, severe weather, unforeseeable transport or production problems affecting companies that supply FCSL.

9.2 If the Force Majeure event lasts longer than 60 days then FCSL shall have the right to terminate the Agreement by providing notice in writing to Customer & returning all sums paid by Customer under the Agreement. No compensation to Customer will then be due in these circumstances.

10. Liability

10.1 FCSL accepts its liability for any loss or damage to private property, death or personal injury caused by the Products & Services supplied, the negligence or deliberate misconduct of FCSL, or any employees, agents or subcontractors acting on FCSL’s behalf, provided, however, that in all cases, (except for death or personal injury caused by its negligence or for fraud where there shall be no limit on liability), FCSL’s liability for losses suffered by Customer will be assessed in accordance with this Clause 10 and be subject to an aggregate maximum equal to 125% of the Price.

10.2 FCSL’s liability shall be limited to reasonably foreseeable losses arising as a direct consequence of breach by FCSL of this Agreement. However FCSL shall not be liable in certain circumstances for example to the extent the causes or the loss:

- a) were not reasonably foreseeable by both parties; &/or
- b) were known by Customer to the exclusion of FCSL at the time that the Agreement was entered into; &/or
- c) arose from the use of the Product &/or Services for purposes other than those contemplated in Clause 7.14.
- d) were reasonably foreseeable & preventable by Customer such as those arising from, but not limited to:
 - (i) data or information loss caused by failing to keep back up copies of important data on separate media; or
 - (ii) virus damage; or
 - (iii) user inflicted problems such as those caused by failure to read &/or follow user instructions provided in writing or orally by a FCSL or third party technician.

10.3 In claiming against FCSL for any such losses Customer is expected to have acted reasonably, for example, with regard to:

- a) how the losses were accrued – including steps taken to mitigate or to avoid losses occurring; &
- b) taking reasonable precautions to avoid loss (such as contacting FCSL promptly upon becoming aware of an issue).

10.4 FCSL will not be liable for:

- A) loss resulting from any defect or deficiency in Products or Services which FCSL shall have remedied within a reasonable period &/or consistently with the terms of a Service Description;
- b) indirect and consequential losses;
- c) loss of business profits, salary, revenue, loss or corruption of data or anticipated savings.

11. Intellectual Property & Software

11.1 FCSL indemnifies Customer from all reasonable, direct and demonstrable costs & liabilities arising from any claim that use of FCSL branded Products or FCSL branded Software infringes any third party IPR. FCSL may recall & exchange or modify Product or Software or refund Customer (minus depreciation in this event) or require Customer to install replacement or altered Software from a CD, DVD or an internet download.

11.2 FCSL retains all FCSL-owned IPR in Products. Customer must notify FCSL immediately of any infringing or unauthorised use of Products or IPR in it.

11.3 FCSL does not indemnify Customer for:

- a) Third Party Hardware or Third Party Software;
- b) unauthorised modification or use of the Products or Software;
- c) any claim caused by the use of Products or Software in conjunction with anything not supplied by FCSL. Customer must comply with the license conditions for any Software supplied.

11.4 Customer indemnifies FCSL for any claim which arises due to Customer's own actions of which FCSL had no knowledge or could not reasonably be expected to have had knowledge, or for any claim related to IM or IPR specified or owned by Customer & integrated into Product.

11.5 FCSL is allowed to litigate, negotiate & settle claims & Customer must provide reasonable assistance if requested to assist FCSL if litigation is directly related to Products supplied to Customer.

12. TUPE

Customer shall keep FCSL fully indemnified against any claims, costs, demands, awards, compensation or other liability of any nature arising out of the termination of the employment rights (by way of redundancy or otherwise) or deemed transfer of any employment rights of any employees of the Customer or otherwise resulting from the entering into or termination of any Order, Services or this Agreement (in whole or in part) for whatsoever reason.

13. Export Control

Customer is advised that Product, which may include technology & software, is subject to EU and US export control laws & laws of the country where it is delivered or used. Under these laws, Product may not be sold, leased or transferred to restricted end-users or countries or for restricted end-uses. Customer agrees to abide by these laws.

14. Data Protection

Personal data obtained by FCSL from Customer shall be held & processed in accordance with applicable laws and consistently with FCSL's Privacy Policy.

For full details please visit the "CONTACT" page of our website.

15. Confidentiality

Each party must treat all information received from the other which appears to be confidential as it would treat its own confidential information generally, but at least, with no less than a reasonable degree of care.

16. Termination

16.1 Either party may terminate this Agreement or any Order if the other:

- a) commits a material or persistent breach of these Conditions and fails to remedy such breach within 30 days of written notice being given to it by the other party requiring a remedy;
- b) becomes insolvent or bankrupt or is unable to pay debts as they fall due.

16.2 FCSL may terminate this Agreement or any Order with immediate written notice if Customer fails to pay on time or breaches or FCSL reasonably suspects Customer has breached export control laws.

16.3 The following clauses of these Conditions shall survive any termination or expiration of these Conditions & shall continue to bind the parties & their permitted successors & assigns: clauses 3, 7-15, 16.3 and 17-19 inclusive.

17. Law & Jurisdiction

This Agreement is governed by English Law and the exclusive jurisdiction of the English courts.

18. Assignment & Subcontracting

FCSL may assign, subcontract or transfer its obligations or rights to a competent third party in whole or in part. Customers may do so only with FCSL's written consent.

19. Miscellaneous

If any part of these Conditions are found to be unenforceable by a court, the rest are unaffected. All notices must be in writing & sent to a legal officer of each party, at the address provided on the invoice. This Agreement forms the entire agreement of the parties in relation to the relevant Order to the exclusion of all other terms or representations verbal or otherwise and FCSL shall have no liability in relation to such terms or representations, unless made fraudulently. Customer can find all FCSL policies, Product and Service Offering details and notices at www.fcs.co.uk

20. Environment

In accordance with the UK WEEE Regulations FCSL provides Collection Facilities for Business customers. Products deposited at Collection Facilities will be recycled by FCSL in accordance with WEEE. Customer is responsible, at its cost, for returning products to Collection Facilities.