

# FOSS' GLOBAL TERMS AND CONDITIONS FOR SALE, LEASE AND LICENSING OF PRODUCTS, DIGITAL SERVICES AND SERVICES

## 1. Application and Validity

These terms and conditions ("Terms"), together with the specific order, constitute a contract between the invoicing FOSS company ("FOSS") and the customer submitting the order ("you" or "your") when the order has been confirmed by FOSS ("Order").

These Terms apply to any purchase, lease or licensing of (i) FOSS' instruments, spare parts and consumables (collectively "Products"), (ii) FOSS' set of digital services ("Digital Services") (as specified on [www.fossanalytics.com/digital-services-documents](http://www.fossanalytics.com/digital-services-documents)), (iii) FOSS' preventive maintenance and ad hoc services ("Services") (as specified on [www.fossanalytics.com/PMA](http://www.fossanalytics.com/PMA) ("Service Specification"), and (iv) FOSS' total solutions (such as SmartCare™) ("Total Solutions") (as specified on [www.fossanalytics.com/en/support/smartcare](http://www.fossanalytics.com/en/support/smartcare)).

These Terms shall be the entire agreement between you and FOSS on the subject matter described herein unless otherwise agreed in writing.

## 2. Price and Payment

- The prices/licenses for Products, Digital Services, Services and Total Solutions are stated in FOSS' quotation or order confirmation or in the current price list. The prices/licenses are exclusive of sales tax (VAT).
- FOSS will apply an administrative fee to your order, except for orders placed by you on the FOSS webshop with payment by credit card.
- FOSS may apply a delivery fee to your order depending on the agreed Incoterms.
- FOSS may require down payment.
- FOSS may charge you reasonable interests on overdue payments.

## 3. Delivery and Acceptance of Products

- FOSS will provide delivery dates upon receipt of your Order.
- FOSS will package the Products to withstand normal wear and tear during shipping and handling.
- Unless otherwise agreed in writing, delivery of the Products is made EXW loaded at FOSS' warehouse (Incoterms 2020). In the absence of specific instructions, FOSS will select the carrier and ship to the location designated by you. FOSS will invoice freight and insurance in separate line of invoice. FOSS may deliver the Products in one or more shipments and invoice each shipment separately.
- You are requested to inspect the Products at receiving point and file remarks of the outer packaging condition on the proof-of-delivery document (e.g. if the packaging is damaged or labels are missing).
- You should inform FOSS as soon as possible if you experience any shortages, defects, or damages in relation to the Products.
- If you must return a defect Product, FOSS will provide you with a Return Material Authorization form and pay for the transportation of the returned Product.

## 4. License to Digital Services

- If you have ordered Digital Services, FOSS grants you the End User License available at [www.fossanalytics.com/en/FOSS-Terms-and-conditions](http://www.fossanalytics.com/en/FOSS-Terms-and-conditions) ("Digital Services License"). The yearly Digital Services License is automatically renewed for additional year(s), unless terminated as set forth in clause 19. The renewal will be based on FOSS' current price list valid at the time of renewal.
- You may only use the Digital Services License for one designated person or instrument per Digital Service License for your own operation of your own FOSS instruments. Your use of the Digital Services on instruments from other manufacturers require a separate written agreement with FOSS.
- In order for FOSS to improve, deliver and optimize the Digital Services, you permit FOSS or a FOSS authorized representative to (i) get online access to the FOSS provided systems and the performance data, and (ii) to use such performance data in an anonymised and consolidated form to improve the general performance of FOSS' analytical solutions.

## 5. Performance of the Services

- FOSS shall perform the Services in accordance with the Order, these Terms, the Service Specification, professional standards and in compliance with laws and regulations.
- The Services can be provided (i) at the location of the instrument, (ii) as FOSS supported self-replacement or (iii) at a FOSS service location, as specified in the Service Specification.
- FOSS will use reasonable efforts to meet any performance date or respond time for the Services specified in the Order or as otherwise

arranged with you, however, any such date or respond time shall be an estimate only.

(d) Unless otherwise stated in the FOSS quotation, the price for Service is exclusive of travel costs of the service engineer, and the price for Service is per instrument.

(e) Yearly Service contracts are automatically renewed for additional year(s) based on FOSS' then current price list, unless terminated as set forth in clause 19.

## 6. FOSS' Total Solutions (such as SmartCare™)

FOSS' total solutions are a combination of remote and on-site support from our service engineers and online instrument performance and calibration monitoring reports. FOSS' total solutions are covered by these terms such that the remote and on-site support from our service engineers is covered as "Services" and the online instrument performance and calibration monitoring reports (and additional online offerings) is covered as "Digital Services". The Total Solutions are automatically renewed for additional year(s) based on FOSS' then current price list, unless terminated as set forth in clause 19.

## 7. Responsibilities of Customer in relation to Services

- You agree to maintain the instrument and operate it in accordance with the Service Specifications and applicable manuals.
- You agree to inform FOSS if the instrument is relocated.

## 8. Security Interests in Products

**(a) Ownership to the Products shall only pass to you upon full payment of the purchase price.**

- Products loaned, leased or rented to you, if any, are owned by FOSS. You will (i) keep such Products in your possession, (ii) have no interest in such Products other than the lease or rental rights granted, (iii) keep such Products free and clear of all third-party interests, (iv) not move such Products from their installed location without the prior written consent of FOSS, and (v) store and maintain such Products in accordance with instructions in the applicable manuals.

## 9. Insurance

FOSS agrees to keep the following insurance coverage throughout our delivery of Products, Digital Services and Services to you:

- Workers' Compensation Insurance: Statutory limits.
- Employer's Liability Insurance with a minimum limit of US\$3,000,000.
- General & Products Liability Insurance with minimum limit of US\$10,000,000.
- Automobile Liability Insurance: Statutory limits.
- Cyber Insurance with a minimum limit of US\$2,000,000.

## 10. Warranty on Products, Digital Services and Services

- FOSS warrants that during the warranty period (at least 12 months for new Products, cf. FOSS' Global Warranty Policy available at [www.fossanalytics.com/en/FOSS-Terms-and-conditions](http://www.fossanalytics.com/en/FOSS-Terms-and-conditions)), the Products (i) will be free from defects in material and workmanship and will meet the Specifications, and (ii) will be fit and safe for the purpose for which they are marketed by FOSS. This warranty shall become void in the event that: You improperly maintain the Product, you install or use any non-FOSS parts, you alter the Product, or you use a non-FOSS authorised agent to repair the Product.
- FOSS warrants that the Products, Digital Services and Services (i) comply with all applicable laws, (ii) are free of any third-party interests, and (iii) will not infringe any intellectual property rights.
- FOSS warrants that you will be able to purchase consumables and spare parts for 7 years after we stop production of a Product.
- These warranties are exclusive and in lieu of all other warranties, expressed or implied.

## 11. Intellectual Property Indemnification

FOSS agrees to indemnify, hold harmless and defend you from any costs, expenses (including reasonable attorneys' fees), losses, damages or liability incurred in case the delivered Product or Digital Service infringe any intellectual property rights when used as intended in the FOSS specification and manuals. If a third party's infringement claim disrupts your use of the Product or Digital Service, you agree to let FOSS handle any settlement discussions and FOSS may, (i) obtain a license to continue use of the Product or Digital Service; (ii) modify the Product or Digital Service to avoid the infringement; or (iii) replace the Product or Digital Service with a functionally equivalent and non-infringing product.

## 12. Limitation of Liability

Neither you nor FOSS shall be liable under any circumstances for loss of profits, loss of data, or any indirect, consequential, incidental, special, or punitive damages even if advised of the possibility of such damages. FOSS' total liability hereunder shall be capped at the required insurance coverage specified in these terms (the "liability cap"). The liability cap shall not apply in the event of intentional misconduct, confidentiality breach, intellectual property indemnification or personal injury (including death).

## 13. Ownership of Intellectual property and Data

All data and intellectual property provided by you to FOSS remains your exclusive property. Likewise, all data and intellectual property provided by FOSS to you remains FOSS' exclusive property.

## 14. Information Security

FOSS has prepared a Digital Services risk assessment ("Data Handling and Security") to demonstrate that FOSS has the appropriate technical measures in place to ensure information security regarding the Digital Services. The Data Handling and Security is available at [www.fossanalytics.com/digital-services-documents](http://www.fossanalytics.com/digital-services-documents).

## 15. Force Majeure

FOSS shall not be liable for delays in performance resulting from causes beyond our reasonable control, such as natural disasters, fire, strikes, embargos, acts of government, war, or other similar causes.

## 16. Governing Law and Jurisdiction

These Terms shall be interpreted pursuant to the substantive laws of the country of the defendant without regard to any conflicts of law rules. The United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply. Any dispute hereunder or the application or interpretation of these Terms shall be referred to ICC arbitration in the country of the defendant. The International Court of Arbitration shall exclusively determine whether you or FOSS is defendant for the purpose of this clause in the event of multiple claims and multiple arbitrations and shall exclusively decide on and ensure consolidation of related multiple claims and related multiple arbitrations into one arbitration based on the principle that related claims and arbitrations between FOSS and you shall be consolidated into the ICC arbitration that was formally commenced first.

## 17. Confidentiality

Both parties shall keep information received from the other party, including the content of Orders, confidential and shall not disclose it to any third party. Both parties shall take reasonable steps to prevent unauthorised disclosure or use of confidential information. The obligations of confidentiality and non-use shall not apply to information (i) which at the time of disclosure hereunder is, or later becomes, part of the public domain; (ii) which the recipient can show to have been in possession of at the time of disclosure, or has been made available from a third party with the right to disclose it; or (iii) which the recipient is required by law to disclose.

## 18. Data Protection (GDPR)

FOSS is committed to be in full compliance with data protection rules - including the European General Data Protection Regulation (GDPR). FOSS is the data controller for the purpose of the applicable data protection rules. By placing an Order and submitting your details, you agree that FOSS may keep your Personal Data in our files and further process it in accordance with FOSS' Privacy Policy available at: [www.fossanalytics.com/en/news-articles/policies/data-privacy-policy](http://www.fossanalytics.com/en/news-articles/policies/data-privacy-policy).

## 19. Termination of Digital Service, Service and Total Solutions

- (a) Any automatically renewed agreement for Digital Service, Service or Total Solutions may be terminated by you with effect from the end of the current contract period.
- (b) FOSS may terminate an automatically renewed agreement for Digital Service, Service or Total Solutions by giving you 12 months prior written notice.
- (c) Upon termination, FOSS is obliged to leave your network and delete all your non-anonymised data. However, you have 30 days from the effective date of termination to request your data returned in an electronic format accepted by FOSS.

## 20. FOSS' Compliance, Sustainability and Quality Statement

FOSS is committed to the preservation of our reputation and integrity through compliance with applicable laws, regulations and ethical standards in each of the markets in which we operate. To underline the importance of this commitment, we have formulated our position on legal requirements and ethical issues in our globally applicable FOSS Sustainability (CSR) Policy, which serves as a guide to our behaviour in business dealings. FOSS will not export to any country, entity or person to which such export is prohibited. FOSS will not tolerate any form of corruption or bribery. Our ethics and compliance efforts are supplemented by an independently verified whistleblower system.

Employees, business partners, as well as third parties have the opportunity to voice concerns or report irregular behaviour at any time on our external website, <https://foss.whistleblownetwork.net>.

Acting responsibly and with integrity has been our approach to doing business since the inception of our company in 1956 by Nils Foss. FOSS is an active participant of the UN Global Compact and a member of SEDEX (Supplier Ethical Data Exchange), the world's largest platform for sharing responsible sourcing data on supply chains. Please see more at [www.fossanalytics.com/en/about-foss/sustainability](http://www.fossanalytics.com/en/about-foss/sustainability).

A guiding principle for FOSS is that all products and services shall be of the highest standards of quality and therefore FOSS is certified to both ISO9001 (Quality Management) and ISO27001 (Information Security Management). These and other certificates can be found at [www.fossanalytics.com/en/support/certificates](http://www.fossanalytics.com/en/support/certificates).