

PLATINUM SUPPLIER TERMS AND CONDITIONS

1. THESE TERMS OF USE

- 1.1 These "**Supplier Terms**" provisions (including any other documents referred to in these provisions) set out the terms and conditions on which a supplier ("**Supplier**") may use the Fortissimo marketplace website (the "**Marketplace**") to sell services on the Marketplace.
- 1.2 Please read these Supplier Terms carefully before using the Marketplace, as these will apply to all use of the Marketplace. Please print a copy of this for future reference.
- 1.3 By using the Marketplace, the Supplier confirms its acceptance of these Supplier Terms and agrees to comply with them.
- 1.4 Use of the Marketplace is not permitted without agreement to these Supplier Terms.

2. INFORMATION ABOUT FORTISSIMO MARKETPLACE LTD

- 2.1 The Marketplace is operated by Fortissimo Marketplace Ltd. a company registered in Scotland under company number SC546284 and with its registered office address at 5 Roxburgh Street, Edinburgh EH8 9TA ("**Fortissimo**").
- 2.2 The Fortissimo Marketplace is designed to provide Suppliers with the facility to sell to Clients a broad range of advanced simulation and modelling services operating on a cloud of high performance computing.
- 2.3 Before accessing the Marketplace services to sell services please apply for registration as a Supplier (as described in Clause 6.1) and accept these Supplier Terms. These Supplier Terms are presented to each Supplier when they register. Access to the Marketplace is not available until the registration process is completed.
- 2.4 Please read these Supplier Terms carefully. By clicking the acceptance of Supplier Terms button Suppliers will be making an offer to enter into a contract with Fortissimo Marketplace Ltd and will be bound by these Supplier Terms.

3. CHANGES TO THESE TERMS

- 3.1 Fortissimo may revise these Supplier Terms at any time by amending this page. Please check this page from time to time to take notice of any changes we made, as they are binding on Suppliers.

4. INTERPRETATION

- 4.1 The following definitions and rules of interpretation apply in these Supplier Terms.
- 4.2 Definitions:

" Annual Fee "	has the meaning given to that expression in Clause 8.1
" Supplier Terms "	means these Supplier Terms, as amended or varied from time to time in accordance with its terms

"Business Day"	means a day other than a Saturday, Sunday or public holiday in Scotland or England when banks in London are open for business
"Client"	means a Prospective Client who has entered into a binding contract to purchase Services from the Supplier
"Commission"	has the meaning given to that expression in Clause 8.3
"Direct Contract"	means a contract for the supply of Services entered into between the Supplier and, either: (i) a Client who was Introduced by Fortissimo through the Marketplace; (ii) any other Client who, although not a Prospective Client, would not have entered into such a contract but for an Introduction by Fortissimo through the Marketplace
"Existing Client"	means a Client with whom the Supplier has a then current contract under which the Supplier supplies that Client with Services
"Introduction"	means the introduction by Fortissimo of a Client to the Supplier through the Marketplace, whether: (i) by enabling the Supplier to promote their Services to Clients through the Marketplace; or (ii) through the provision to the Supplier of the contact details of an employee at a Prospective Client and the expressions Introduce , Introduces and Introduced shall be construed accordingly
"Marketplace"	means the online portal accessed at http://fortissimo-project.eu/ through which the Supplier may promote Services to Suppliers
"Marketplace Suppliers"	means persons (including the Supplier) that are given access to the Marketplace by Fortissimo to enable them to promote their high performance computing services
"Net Income"	means the sums receivable by the Supplier in respect of the supply of any Services under a Direct Contract less any value added tax or other sales tax
"Platinum Service"	means the services described at Clause 6
"Prospective Client"	means a Supplier who is not an Existing Client and to whom the Supplier has not at any time previously provided services the same as or similar to the Services
"Relevant Policies"	has the meaning given to that term in Clause 7.1.2
"Relevant Requirements"	has the meaning given to that term in Clause 7.1.1

"Services" means any services (include any software, infrastructure or computing power, the functionality of which is provided as a service) marketed, supplied, sold or otherwise made available for sale, lease or hire by the Supplier from time to time

"Supplier" means a person approved by Fortissimo as an authorised Supplier of the Marketplace.

4.3 A **"person"** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

4.4 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

4.5 A reference to a statute or statutory provision will include all subordinate legislation made from time to time.

4.6 A reference to **"writing"** or **"written"** does not include e-mail.

4.7 Any words following the terms **"including"**, **"include"**, **"in particular"**, **"for example"** or any similar expression will be construed as illustrative and will not limit the sense of the words, description, definition, phrase or term preceding those terms.

4.8 References to Clauses are to the Clauses of these Supplier Terms.

5. **COMMENCEMENT AND DURATION**

5.1 These Supplier Terms will continue in force until terminated in accordance with Clause 10.

6. **MARKETPLACE**

6.1 The Supplier shall become a Marketplace Supplier and gain access to the Marketplace on the payment of the Annual Fee in accordance with Clause 8.1.

6.2 On becoming a Marketplace Supplier, the Supplier will be able to use the Marketplace to:

6.2.1 demonstrate and promote the Supplier's Services;

6.2.2 offer services on either a pay-for-use or pre-paid basis;

6.2.3 offer customised solutions to Suppliers either on an individual basis or collaboratively with other Marketplace Suppliers;

6.2.4 make contracts for the sale of Services to Prospective Clients;

6.2.5 invoice and collect payments due from Clients to the Supplier for Services provided by the Supplier; and

6.2.6 obtain from Fortissimo the benefits of its Platinum Service.

6.3 Where the Supplier contacts a Prospective Client through the Marketplace and that contact results in a Direct Contract between the Supplier and the Client, Fortissimo will be deemed to have made an Introduction.

6.4 Neither Fortissimo nor the Supplier shall have any authority, and shall not hold itself out, or permit any person to hold itself out, as being authorised to bind the other party in any way, and shall not do any act which might reasonably create the impression that it is so authorised. Neither Fortissimo nor the Supplier shall make or enter into any contracts or commitments or incur any liability for or on behalf of the other, including for the provision of the Services or the price for them.

6.5 The Supplier:

6.5.1 is solely responsible for the provision of any Services to Clients, whether under a Direct Contract or otherwise and Fortissimo shall have no liability in respect of any breach of a Direct Contract, whether by the Supplier or a Client;

6.5.2 shall ensure that Direct Contracts contain provisions whereby the other party, that is the Client, is obliged (a) to accept invoices for Services from Fortissimo (or its agent) and (b) to make payment on these invoices to Fortissimo (or its agent);

6.5.3 shall perform Direct Contracts timeously, in accordance with their terms and using reasonable skill and care;

6.5.4 acknowledges that Fortissimo shall have no obligation to pay, or procure payment, for any Services ordered from the Supplier by a Client;

6.5.5 shall pay the Commission due by it to Fortissimo in accordance with the terms of these Supplier Terms; and

6.5.6 shall indemnify Fortissimo and keep Fortissimo indemnified on demand from and against any claim, loss, liability or expense (including any legal costs and expenses) suffered by Fortissimo and arising in connection with: (i) the performance or non-performance of a Direct Contract; (ii) the acts or omissions of the Supplier as they relate to the supply of any Services to Suppliers.

7. ANTI-BRIBERY COMPLIANCE

7.1 Each of Fortissimo and the Supplier will:

7.1.1 comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including the Bribery Act 2010 ("**Relevant Requirements**"); and

7.1.2 have, and will maintain in place throughout the term of these Supplier Terms, its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements ("**Relevant Policies**") and will enforce them where appropriate.

7.2 For the purpose of this Clause 7, the meaning of adequate procedures and foreign public official and whether a person is associated with another person will be

determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purpose of this Clause 7, a person associated with a party includes any agent, delegate or subcontractor of that party.

8. COMMISSION AND PAYMENTS

- 8.1 In consideration of becoming a Marketplace Supplier, the Supplier shall pay an annual fee of One Thousand Euros €1,000 ("**Annual Fee**"), which shall be due and payable within thirty (30) calendar days of the Commencement Date and annually thereafter.
- 8.2 In addition to the Annual Fee, Fortissimo shall be entitled to Commission if a Prospective Client Introduced by Fortissimo enters into a Direct Contract with the Supplier.
- 8.3 The amount of commission payable shall be Fifteen per cent (15%) of the Supplier's Net Income received or receivable under a Direct Contract (as it may be renewed, extended or amended) ("**Commission**"). The Commission will be deducted from the Net Income by Fortissimo or its agent in the course of processing the Net Income due to the Supplier under the relevant Direct Contract and prior to remitting the balance of the Net Income to the Supplier.
- 8.4 Fortissimo and/or its agents will obtain the following information from the Marketplace:
- 8.4.1 the date on which the Supplier entered into a Direct Contract;
 - 8.4.2 the amount of the payments due for Services under it; and
 - 8.4.3 the dates on which payments for such Services are payable.
- 8.5 Using the information obtained in terms of Clause 8.4 Fortissimo (or its agent) will invoice the Client or Supplier for the payments due by the Client or Supplier to the Supplier under Direct Contracts and thereafter Fortissimo (or its agent) will collect the payments due by the Client or Supplier. Fortissimo and/or its agents will carry out such invoicing and collection activities as agent for the Supplier and the VAT due on the invoice will be regulated by the law applicable to the Direct Contract.
- 8.6 Fortissimo shall, within ten (10) days of the end of the calendar quarter in which it received payment for Services under a Direct Contract, send to the relevant Supplier a written statement setting out, in respect of such calendar quarter, and in respect of each Direct Contract:
- 8.6.1 the payments for Services received;
 - 8.6.2 the Commission payable to Fortissimo and the VAT payable thereon; and
 - 8.6.3 how the balance of Net Income after deduction of Commission and VAT has been calculated.
- 8.7 In those cases where the Client has prepaid the amount due under a Direct Contract, the date of receipt of payment for Services for the purposes of these Supplier Terms

shall be the date specified as the payment date for these Services in the Direct Contract.

8.8 At the same time as providing the written statement referred to in Clause 8.6 Fortissimo shall provide the Supplier with a receipt for the Commission retained by Fortissimo showing the amount of Commission together with the VAT due thereon.

8.9 Commission shall be payable to Fortissimo in the currency in which it is received by the Supplier.

8.10 All Commissions and other sums payable by the Supplier under these Supplier Terms:

8.10.1 are exclusive of value added tax or other applicable sales tax, which shall be added to the sum in question;

8.10.2 are due on the date when the Net Income is remitted by Fortissimo to the Supplier and are payable by deduction from the sums collected by Fortissimo on behalf of the Supplier before Fortissimo remits the Net Income to the Supplier;

8.10.3 (if not collected by deduction as set out in clause 8.9.2 above) all Commissions and other sums shall be paid in full without any deductions except where the Supplier is required by law to deduct withholding tax from sums payable to the payee. If the Supplier is required by law to deduct withholding tax, then the Supplier and Fortissimo shall co-operate in all respects and take all reasonable steps necessary to:

(a) lawfully avoid making any such deductions; or

(b) enable Fortissimo to obtain a tax credit in respect of the amount withheld.

8.11 If the Supplier fails to make any payment due to Fortissimo under these Supplier Terms by the due date for payment, then, without limiting Fortissimo's remedies under Clause 133, the Supplier shall pay interest on the overdue amount at the rate of 4% per annum above the Royal Bank of Scotland plc's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Supplier shall pay the interest together with the overdue amount.

8.12 Fortissimo shall keep separate accounts and records giving correct and adequate details of all payments received by it pursuant to Direct Contracts entered into by Suppliers and all deductions made in the calculation of Net Income. Fortissimo shall permit the duly appointed representatives of the Supplier at all reasonable times to inspect all such accounts and records and to take copies of them.

8.13 Termination of these Supplier Terms, howsoever arising, shall not affect the continuation in force of this Clause 8 and the Supplier's obligation to pay Commission to Fortissimo in accordance with it.

9. OBLIGATIONS OF THE SUPPLIER

- 9.1 The Supplier must at all material times act in good faith towards Fortissimo.
- 9.2 The Supplier shall provide Fortissimo at all material times with the information Fortissimo reasonably requires to carry out its duties, including marketing information for and details of the Services available from the Supplier as well as information about the Supplier itself.
- 9.3 The Supplier shall inform Fortissimo immediately if the Supplier suspends or ceases to perform or supply its Services.
- 9.4 The Supplier shall ensure that its Direct Contracts provide for the invoicing and payment arrangements set out in these Supplier Terms so that its Clients and Suppliers will be obliged to comply with these. The Supplier agrees that it will not seek recourse (legal or otherwise) from Clients or Suppliers for payment for Services where the Client or Supplier has already made a valid payment to Fortissimo or its agents.

10. OBLIGATIONS OF FORTISSIMO

- 10.1 Fortissimo shall provide the Supplier with its Platinum Service which includes the following services:
- 10.1.1 a register to allow Suppliers to promote their organisation and services
 - 10.1.2 a platform to allow Suppliers to offer pre-configured services and bundled packages via the Marketplace consisting of software and high performance computing resources;
 - 10.1.3 an area where Suppliers have access to the best-practice guides and white papers can be obtained;
 - 10.1.4 a helpdesk facility;
 - 10.1.5 marketing campaigns to attract Suppliers to the Marketplace;
 - 10.1.6 ready access to Marketplace resources such as consultancy, expertise and high performance computing resources allowing Suppliers to easily build a fully integrated service;
 - 10.1.7 Fortissimo's billing and payment process;
 - 10.1.8 a matchmaking service to assist Suppliers in finding suitable services provided by Suppliers; and
 - 10.1.9 an after sales service including;
 - (a) customer satisfaction reviews
 - (b) repeat contact campaigns to encourage or generate repeat business.

11. CONFIDENTIALITY

11.1 Each of the Supplier and Fortissimo undertakes that it will not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by Clause 11.2.

11.2 Each of the Supplier and Fortissimo may disclose the other party's confidential information:

11.2.1 to its employees, officers, representatives or advisers who need to know such information for the purposes of carrying out the party's obligations under these Supplier Terms. Each party will procure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this Clause 11; and

11.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority (including any recognised stock exchange).

11.3 Neither the Supplier nor Fortissimo will use the other's confidential information for any purpose other than to perform its obligations under these Supplier Terms.

11.4 Each of the Supplier and Fortissimo will return all documents and other records (in whatever form) containing confidential information supplied by the other party, on termination of these Supplier Terms, and no copies will be kept.

12. LIABILITY

12.1 Neither the Supplier nor Fortissimo will be liable to the other regarding these Supplier Terms for any indirect, special or consequential loss or damages whether caused by breach of contract or delict (including negligence or breach of statutory duty) or arising in any other way.

12.2 Neither the Supplier nor Fortissimo will be liable to the other regarding these Supplier Terms for any loss or damage, whether caused by breach of contract, delict (including any negligence or breach of statutory duty) or arising in any other way, in excess of the greater of:

12.2.1 125% of the aggregate Commission received by Fortissimo under these Supplier Terms; and

12.2.2 £500,000 Sterling.

12.3 The limits and exclusions of liability set out in Clauses 12.1 and 12.2 do not apply to:

12.3.1 any liability of a party under Clauses 7, 6.5 and 11;

12.3.2 liability for death or personal injury caused by a party's negligence or that of its employees or agents;

12.3.3 loss caused by fraud or fraudulent misrepresentation;

12.3.4 any obligation on the Supplier to pay Commission;

12.3.5 any loss which by law cannot be excluded or limited.

13. TERMINATION

13.1 Each of the Supplier or Fortissimo may terminate these Supplier Terms by giving the other no less than three (3) months' written notice, with effect from the date of expiry of such notice.

13.2 Without affecting any other right or remedy available to it, either the Supplier or Fortissimo may terminate these Supplier Terms with immediate effect by giving written notice to the other party if:

13.2.1 the other party commits a material breach of any other term of these Supplier Terms which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of thirty (30) days after being notified in writing to do so;

13.2.2 the other party repeatedly breaches any of the terms of these Supplier Terms in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of these Supplier Terms;

13.2.3 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;

13.2.4 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

13.2.5 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

13.2.6 an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company);

- 13.2.7 the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- 13.2.8 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- 13.2.9 the other party (being an individual) is the subject of a bankruptcy petition or order;
- 13.2.10 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
- 13.2.11 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Clause 13.2.3 to Clause 13.2.10 (inclusive);
- 13.2.12 the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
- 13.2.13 the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

14. CONSEQUENCES OF TERMINATION

- 14.1 Subject to Clause 14.2, on termination of these Supplier Terms, the following Clauses will continue in force: Clause 4 (*Interpretation*), Clause 5 (*Commission and Payment*), Clause 11(*Confidentiality*) and Clause 14 to Clause 19 (inclusive).
- 14.2 Termination of these Supplier Terms will not affect any contracts for the sale of Services entered into by the Supplier prior to the date of termination.
- 14.3 Termination of these Supplier Terms will not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination.

15. SEVERANCE

- 15.1 If any provision or part-provision of these Supplier Terms is or becomes invalid, illegal or unenforceable, it will be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision will be deemed deleted. Any modification to or deletion of a provision or part-provision under this Clause will not affect the validity and enforceability of the rest of these Supplier Terms.

16. WAIVER

- 16.1 No failure or delay by a party to exercise any right or remedy provided under these Supplier Terms or by law shall constitute a waiver of that or any other right or remedy,

nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

17. NOTICES

17.1 Any notice given to a party under or in connection with these Supplier Terms will be in writing and will be delivered by hand or by pre-paid first-class post or other next Business Day delivery service at its registered office (if a Supplier) or its principal place of business (in any other case).

17.2 Any notice will be deemed to have been received:

17.2.1 if delivered by hand, on signature of a delivery receipt; or

17.2.2 if sent by pre-paid first-class post or other next Business Day delivery service, at 9.00 am on the second Business Day after posting.

17.3 This Clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

18. NO PARTNERSHIP

18.1 Nothing in these Supplier Terms is intended to, or will be deemed to, establish any partnership or joint venture between either of the parties, nor (except as specifically provided for in relation to invoicing and collection of moneys) constitute either party the agent of another party, or authorise either party to make or enter into any commitments for or on behalf of the other party.

18.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

19. ASSIGNMENT AND OTHER DEALINGS

19.1 The Supplier will not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights and obligations under these Supplier Terms without the prior written consent of Fortissimo.

19.2 Fortissimo may, after having given prior written notice to the Supplier, assign, transfer or subcontract any or all of its rights and obligations under these Supplier Terms.

20. THIRD PARTY RIGHTS

20.1 No one other than a party to these Supplier Terms, their successors and permitted assignees, will have any right to enforce any of its terms.

21. ENTIRE AGREEMENT

21.1 These Supplier Terms and any documents expressly referred to in it constitutes the entire agreement between the parties regarding the subject matter of the Agreement and supersedes and extinguishes all previous agreements, promises, assurances,

warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

21.2 Each party acknowledges that in entering into these Supplier Terms it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in these Supplier Terms.

21.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in these Supplier Terms.

21.4 Nothing in this Clause shall limit or exclude the liability of either party for fraud.

22. GOVERNING LAW AND JURISDICTION

22.1 These Supplier Terms and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) will be governed by and construed in accordance with the law of Scotland.

22.2 Each party irrevocably agrees that the courts of Scotland will have non-exclusive jurisdiction to settle any dispute or claim arising out of or in connection with these Supplier Terms or its subject matter or formation (including non-contractual disputes or claims).