

# FORTISSIMO MARKETPLACE LIMITED

## USER TERMS AND CONDITIONS

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### 1. THESE TERMS OF USE

- 1.1 These "**User Terms**" provisions (including the Privacy Policy ("**Privacy Policy**") set out at the end of these User Terms together with any other documents referred to in these provisions) set out the terms and conditions on which you may make use of the Fortissimo marketplace website (the "**Marketplace**") as a registered user ("**User**") of the Marketplace. Use of the Marketplace includes accessing, browsing, registering to use, and buying services on the Marketplace.
- 1.2 Please read these User Terms carefully before you start to use the Marketplace, as these will apply to your use of the Marketplace. We recommend that you print a copy of this document for future reference.
- 1.3 By using the Marketplace, you confirm that you accept these User Terms and that you agree to comply with them.
- 1.4 If you do not agree to these User Terms, you must not use the Marketplace.

### PART 1 – GENERAL TERMS

### 2. INFORMATION ABOUT US

- 2.1 The Marketplace is operated by Fortissimo Marketplace Ltd ("**we**"). We are registered in Scotland under company number 546284 and with our registered office address at 5 Roxburgh Street, Edinburgh EH8 9TA.
- 2.2 The Fortissimo Marketplace is designed to provide Users with a broad range of advanced simulation and modelling services operating on a cloud of high performance computing resources provided by third party Suppliers, consultancy services and access to best practice guides and white papers.
- 2.3 Before accessing Marketplace services we ask you to apply for registration as a User (as described in paragraph 6 below) and to accept these User Terms. These User Terms are presented to each User when they register. You will not gain access to the Marketplace until you complete the registration process.
- 2.4 Please read these User Terms carefully. By clicking the "I accept the User Terms" button you will be making an offer to enter into a contract with the Fortissimo Marketplace Ltd and will be bound by these User Terms.

### 3. CHANGES TO THESE TERMS

- 3.1 We may revise our User Terms at any time by amending this page. You will be notified by email of these changes and will have the option to cancel your registration if you so desire.

### 4. CHANGES TO THE MARKETPLACE

- 4.1 We may update the Marketplace from time to time, and may change the content at any time. However, please note that any of the content on the Marketplace may be out of date at any given time, and we are under no obligation to update it.

### 5. ACCESSING THE MARKETPLACE / MARKETPLACE AVAILABILITY

- 5.1 Access to the Marketplace is made available free of charge.
- 5.2 By registering as a User of the Marketplace, you will:

- 5.2.1 have access to preconfigured services and bundled packages consisting of software and high performance computing resources offered by third party Suppliers; and
- 5.2.2 have access to Marketplace consultants to help define your needs and find a service which will meet these on the Marketplace.
- 5.3 We do not guarantee that the Marketplace, or any content on it, will always be available or be uninterrupted. Access to the Marketplace is not provided on an always-available basis. We may suspend, withdraw, discontinue or change all or any part of the Marketplace with or without notice to you. We will not be liable to you or to any third party if for any reason the Marketplace is unavailable at any time or for any period.
- 5.4 You are responsible for making all arrangements necessary for you to have access to the Marketplace. We do not represent that content on or available through the Marketplace is appropriate or available in all countries or locations of the world. We may limit the availability of the Marketplace or any service or product described on the Marketplace to any person or geographic area at any time for any reason including and not limited to sanctions, embargoes or restrictions applicable to the country or location concerned.
- 5.5 The Marketplace is not a storage service. You agree that we have no obligation to store, maintain or provide you with a copy of any information or data you upload to the Marketplace, except as required by law.

## 6. REGISTERING AS A USER ON THE MARKETPLACE

- 6.1 To access the Marketplace, you must apply for registration as a User.
- 6.2 To apply for registration as a User you must provide us with your full name, your email address, and details about your organisation, including its legal name and address, plus any other information about you or your organisation we may request on the appropriate registration pages of the Marketplace. You agree that we may access, store and use any personal information that you provide to us in accordance with these User Terms (including, in particular, our Privacy Policy).
- 6.3 If you apply for registration as a User under section 6.1, you acknowledge and agree that:
  - 6.3.1 the personal information you provide to us will be used as described in the Privacy Policy; and
  - 6.3.2 you shall keep any and all information on your profile accurate and up-to-date.
- 6.4 When you apply for registration as a User, we will review your application in order to ascertain you are a suitable user. If you are a suitable user we will provide you with a username and password. As between you and others, your account belongs to you. You must treat your username and password as confidential, and you must not disclose it to any third party.
- 6.5 We have the right to disable any username or password, whether chosen by you or allocated by us, at any time, if in our opinion you have failed to comply with any of the provisions of these User Terms.
- 6.6 If you know or suspect that anyone other than you knows your User identification code or password, you must promptly tell us at [helpdesk@fortissimo-project.eu](mailto:helpdesk@fortissimo-project.eu).

## 7. **YOUR CONDUCT AS A USER**

7.1 You agree that you **will**:

7.1.1 use your true corporate name or, if an individual, use your real name (and not an alias); and

7.1.2 use the Marketplace in a professional manner.

7.2 You agree that you **will not**:

7.2.1 act dishonestly or unprofessionally;

7.2.2 create a false identity on the Marketplace;

7.2.3 misrepresent your current or previous positions, professional qualifications or other accreditations;

7.2.4 misrepresent your employment for or affiliation with any organisation; and

7.2.5 use (or attempt to use) any other User's account.

## 8. **DESCRIPTION OF THE MARKETPLACE SERVICE**

8.1 When you decide to purchase services from an organisation promoting such services through the Marketplace the resulting legal contract will be made directly between you and the supplier of those services ("**Supplier**").

8.2 The Supplier is responsible for services purchased from the Marketplace and we cannot give any undertaking that any services you purchase from a Supplier through the Marketplace will be of satisfactory quality, and this and any other such warranties (whether express or implied) are disclaimed by us absolutely to the fullest extent permitted by law. You will be responsible for performing your obligations under any contract with a Supplier.

8.3 While we check the services offered by Suppliers for compatibility with those provided by the Marketplace we do not review or control, and are not responsible in any way for, listings provided by Suppliers.

## 9. **HOW CONTRACTS ARE FORMED BETWEEN YOU AND MARKETPLACE PARTNERS**

9.1 Each order you place shall be deemed to be an offer by you to purchase services specified within it subject to the terms set out in your offer.

9.2 No order shall be deemed to be accepted by the Supplier until you and the Supplier have reached agreement on the terms on which you are to purchase the Services and the Supplier issues an acceptance of the order. Such acceptance shall complete the contract between you and the Supplier for the purchase of the services covered by it. Such contract will relate only to those services referred to in the acceptance issued by the Supplier.

9.3 The applicability of VAT to the payments to be made by you under any contract between you and the Supplier will be regulated by that contract.

## 10. **PAYMENT METHODS**

10.1 Purchases for services you make with Suppliers may only be paid for using the payment methods we make available from time to time through our payment facility. In accepting or otherwise processing your payments related to the purchase of services from Suppliers, we act in the capacity of commercial agent of the Supplier. Note, too, that we may appoint our own agent to undertake invoicing and/or payment services for us. The Supplier has acknowledged and agreed that valid payment by you to us for the services you have purchased from the Supplier will satisfy your

obligation to pay the Supplier for the relevant services and consequently, any debt obligations owed by you to the Supplier for the purchase of such services shall be extinguished at the time of payment to us. You acknowledge that these User Terms, and/or any transaction made by you via the Marketplace, do not create or imply any partnership, joint venture or trust relationship between us, you and/or the Supplier. The Supplier has further agreed that it will not seek recourse (legal or otherwise) against you for payment of services if you have validly paid us. All prices shall be shown in the applicable currency and payable in that currency. You accept that some banks may charge you an additional fee for certain transactions (for example, international transactions)

## 11. **CANCELLATION OF SERVICE**

11.1 If you wish to discuss cancelling a service purchased through the Marketplace please contact the Supplier directly using the Marketplace helpdesk facility at [helpdesk@fortissimo-project.eu](mailto:helpdesk@fortissimo-project.eu). Any cancellation made by the Supplier will be in accordance with their own terms and conditions on cancellation.

## 12. **INTELLECTUAL PROPERTY RIGHTS**

12.1 We are the owner or the licensee of all intellectual property rights in the Marketplace. Furthermore we are entitled to display the material published on it. Those works are protected by copyright laws and treaties around the world. All such rights are reserved.

12.2 You may print off one copy, and may download extracts, of any page(s) from the Marketplace for your personal use and you may draw the attention of others within your organisation to content posted on the Marketplace.

12.3 You must not modify the paper or digital copies of any materials you have printed off or downloaded in any way, and you must not use any illustrations, photographs, video or audio sequences or any graphics separately from any accompanying text.

12.4 Our status (and that of any identified contributors) as the authors of content on the Marketplace must always be acknowledged.

12.5 If you print off, copy or download any part of the Marketplace in breach of these User Terms, your right to use the Marketplace will cease immediately and you must, at our option, return or destroy any copies of the materials you have made.

## 13. **RIGHTS YOU LICENSE**

13.1 As between you and us, you (or the relevant organisation) own the content and information that you provide or upload to the Marketplace, and in doing so you grant to us a worldwide, transferable, royalty-free and sub-licensable right to use, copy, modify, distribute, publish and process any and all such content and information for the purposes of facilitating the provision of the services to you but subject always to the arrangements set out in the Privacy Policy.

## 14. **NO RELIANCE ON MARKETPLACE INFORMATION OR THIRD PARTY INFORMATION**

14.1 The content on the Marketplace is provided for general information only. It is not intended to amount to advice on which you should rely. We do not recommend or endorse any Supplier whose information we make available on the Marketplace. You must obtain professional or specialist advice before taking, or refraining from, any action on the basis of the content on the Marketplace.

14.2 Although we make reasonable efforts to update the information on the Marketplace, we make no representations, warranties or guarantees, whether express or implied, that the content on the Marketplace is free from errors or omissions, accurate, complete or up-to-date.

14.3 By using the Marketplace, you may encounter content or information that might be inaccurate, incomplete, delayed, misleading, illegal, offensive, or otherwise harmful. We may not review content, information or data uploaded to the Marketplace by Users or Suppliers. You agree that we are not responsible or liable to you or any third party for any third parties' (including any User's) content or

information, or for any damages or other legal remedy as a result of your (or any third parties') use of or reliance on it.

## 15. **LIMITATION OF OUR LIABILITY**

15.1 Nothing in these terms of use excludes or limits our liability for death or personal injury arising from our negligence, or our fraud or fraudulent misrepresentation, or any other liability that cannot be excluded or limited by the laws of England and Wales.

15.2 To the extent permitted by law, we exclude all conditions, warranties, representations or other terms which may apply to the Marketplace or any content on it, whether express or implied.

15.3 We will not be liable to any User for any loss or damage, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, even if foreseeable, arising under or in connection with:

15.3.1 use of, or inability to use, the Marketplace; or

15.3.2 use of or reliance on any content displayed on the Marketplace.

15.4 Please note that in particular, we will not be liable for (whether direct or indirect):

15.4.1 loss of profits, sales, business, or revenue;

15.4.2 business interruption;

15.4.3 loss of anticipated savings;

15.4.4 loss of data, business opportunity, goodwill or reputation; or

15.4.5 any indirect or consequential loss or damage.

15.5 Subject to sections 15.1 to 15.4, our total liability to you in respect of all losses arising under or in connection with these User Terms, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed twice the amount you have contracted to pay Suppliers for services purchased using the Marketplace during the year prior to you first making a claim against us.

15.6 We will not be liable for any loss or damage caused by a virus, distributed denial-of-service attack, or other technologically harmful material that may infect your computer equipment, computer programs, data or other proprietary material due to your use of the Marketplace or to your downloading of any content on it, or on any website linked to it.

15.7 We assume no responsibility for the content of websites linked on the Marketplace. Where the Marketplace contains links to other sites and resources provided by third parties (for example, to the LinkedIn account of another User), these links are provided for your information only. Such links should not be interpreted as endorsement by us of those linked websites. We have no control over the contents of those sites or resources, and we will not be liable for any loss or damage that may arise from your use of them.

## 16. **SUSPENSION AND TERMINATION**

16.1 We will determine, at our discretion, whether there has been a breach of these User Terms through your use of the Marketplace. Where a breach has occurred, we may take such action as we deem appropriate, including:

16.1.1 immediate, temporary or permanent withdrawal of your right to use the Marketplace (including cancellation of your membership);

- 16.1.2 immediate, temporary or permanent removal of any posting or material uploaded by you to the Marketplace;
- 16.1.3 issue of a warning to you;
- 16.1.4 legal proceedings against you for reimbursement of all costs on an indemnity basis (including, but not limited to, reasonable administrative and legal costs) resulting from the breach;
- 16.1.5 any further legal action against you; and
- 16.1.6 disclosure of such information to law enforcement authorities as we reasonably feel is necessary.

## 17. **VIRUSES**

- 17.1 We do not guarantee that the Marketplace will be secure or free from bugs or viruses.
- 17.2 You are responsible for configuring your information technology, computer programmes and platform in order to access the Marketplace. You should use your own virus protection software.
- 17.3 You must not misuse the Marketplace by knowingly introducing viruses, trojans, worms, logic bombs or other material which is malicious or technologically harmful. You must not attempt to gain unauthorised access to the Marketplace, the server on which the Marketplace is stored or any server, computer or database connected to the Marketplace. You must not attack the Marketplace via a denial-of-service attack or a distributed denial-of service attack. By breaching this provision, you would commit a criminal offence under the Computer Misuse Act 1990. We will report any such breach to the relevant law enforcement authorities and we will co-operate with those authorities by disclosing your identity to them. In the event of such a breach, your right to use the Marketplace will cease immediately.

## 18. **LINKING TO THE MARKETPLACE**

- 18.1 You may link to the Marketplace home page, provided you do so in a way that is fair and legal and does not damage our reputation or take advantage of it.
- 18.2 You must not establish a link in such a way as to suggest any form of association, approval or endorsement on our part where none exists.
- 18.3 You must not establish a link to the Marketplace in any website that is not owned by you.
- 18.4 The Marketplace must not be framed on any other site, nor may you create a link to any part of the Marketplace other than the home page.
- 18.5 We reserve the right to withdraw linking permission without notice.

## 19. **APPLICABLE LAW**

- 19.1 These User Terms, its subject matter and its formation (and any non-contractual disputes or claims) are governed by the laws of England and Wales. We both agree to the exclusive jurisdiction of the English courts.

## **PRIVACY POLICY**

### **1. INFORMATION WE COLLECT FROM YOU**

- 1.1 Your privacy and security are of primary importance to us and we will commit to safeguarding any information that we obtain from, and about, you at all times.
- 1.2 In the User Terms, the service users undertake to observe this Policy. We are also bound by the provisions of the Data Protection Act.
- 1.3 We will store in the Marketplace's database the personal data you supply to us through the Marketplace, when you register as a User of the service and later.
- 1.4 We may collect and process the following data about you:
- 1.4.1 **Information you give us.** You may give us information about you by filling in forms on the Marketplace or by corresponding with us by phone, e-mail or otherwise. This includes information you provide when you register to use our site, apply to become a User, participate in discussion or bulletin boards or other social media functions on the Marketplace, and when you report a problem with the Marketplace. The information you give us may include your name, address, e-mail address and phone number. In providing this information to us you consent to our use of it in the ways we describe in these User Terms (and in particular, this Privacy Policy).
- 1.4.2 **Information we collect about you.** With regard to each of your visits to the Marketplace we may automatically collect the following information:
- (a) technical information, including the Internet protocol (IP) address used to connect your computer to the Internet, your login information, browser type and version, time zone setting, browser plug-in types and versions, operating system and platform; and
  - (b) information about your visit, including the full Uniform Resource Locators (URL) clickstream to, through and from our site (including date and time); pages you viewed or searched for; page response times, download errors, length of visits to certain pages, page interaction information (such as scrolling, clicks, and mouse-overs), and methods used to browse away from the page and any phone number used to call our contact number.

### **2. USES MADE OF THE INFORMATION**

- 2.1 We use information held about you in the following ways:
- 2.1.1 **Information you give to us.** We will use this information:
- (a) to help us manage and administer the service, to review, analyse and audit its performance and its patterns of use, and to plan for the future;
  - (b) to communicate with you regarding your use of the Marketplace;
  - (c) to inform third party service and / or goods providers as required by your need to use their services;
  - (d) to inform third party service providers to whom we may sub-contract the provision of some of our services to you

- (e) to carry out our obligations under these User Terms;
- (f) to notify you about changes to the Marketplace or services; and
- (g) to ensure that content from the Marketplace is presented in the most effective manner for you and for your computer.

2.1.2 **Information we collect about you.** We will use this information:

- (a) to administer our site and for internal operations, including troubleshooting, data analysis, testing, research, statistical and survey purposes;
- (b) to improve our site to ensure that content is presented in the most effective manner for you and for your computer;
- (c) to allow you to participate in interactive features of our service, when you choose to do so; and
- (d) as part of our efforts to keep the Marketplace safe and secure.

2.2 We will not use this information for financial gain by, for example, selling your data to others for marketing purposes unconnected with the Marketplace.

2.3 Please be aware that we may use external Suppliers based outside the European Economic Area to store your data. If we do this we will take steps to ensure that these Suppliers comply with the same standards of data protection which apply in the United Kingdom.

2.4 We reserve the right to monitor your use of the Marketplace, including anything you transmit over the Internet, and any data or software you store on our systems, in order to ensure that you and all the other users are complying with the User Terms and not breaking the law. We must allow any court or other competent authority to inspect our records of your use of the system, or your data, and to take copies of it, if this is legally required; and we must report your activities to the competent authorities if we know or suspect that you are breaking the law. These are legal obligations for us.

2.5 For your security we advise that you maintain the security and confidentiality of your registration details, usernames and passwords. If you have any reason to believe the security of your personal information is compromised in any way to contact us immediately.

### 3. **ACCESS TO INFORMATION**

3.1 The Data Protection Act 1998 gives you the right to access information held about you. Your right of access can be exercised in accordance with that Act. Any access request may be subject to a fee of £10 to meet our costs in providing you with details of the information we hold about you.