

# Comparison of Key Issues in Purchase Agreement

Versions 7.2 and 7.3 to Version 8

Issue	Purchase Agreement V 7.2 and 7.3	Purchase Agreement Version 8
Irrevocable Offer	The customer's offer to acquire equipment is irrevocable and there is no time limit on FBAU responding to the offer.	The customer can revoke their offer if FBAU has not responded in writing or delivered equipment within 60 days. Calculation of the 60 days pauses while FBAU is waiting for any additional information requested from the customer.
Automatic Renewal	The contract automatically renews without FBAU being required to give the customer notice that the minimum term is ending.	FBAU must provide the customer at least 120 days notice that the minimum term is ending.
Reliance on Extraneous Documents	The customer must comply with FBAU's "customer expectation document" as well as terms relating to various types of software which FBAU is not required to provide to the customer.	FBAU must provide the customer a copy of the customer expectation document prior to the customer signing the contract. All terms relating to software are contained wholly within the contract, except for any end-user license agreement, a link to which is provided in the contract.
Unilateral Variation Terms	FBAU can amend the customer expectation document and terms relating to various types of software without notifying the customer.	There is no right for FBAU to unilaterally amend the customer expectation document. FBAU cannot unilaterally amend terms related to software except for end-user license agreements where neither FBAU nor any of its related bodies corporate are the licensor, in which case FBAU must notify the customer of any changes that FBAU becomes aware of.
Unilateral price increases	FBAU has the right, acting reasonably, to immediately vary the charges (but not the purchase price) payable by the customer by notifying the customer.	FBAU never had the right to unilaterally vary the purchase price. Any changes to the support service charges must be expressly set out in the contract at the time it is signed by the customer.
Unilateral imposition of new charges and charging for equipment and software not delivered	FBAU may impose a "base support charge" if certain monthly print volumes are not met. FBAU will invoice the customer for licensed software irrespective of delivery and has the right to invoice for equipment prior to delivery.	Base support charge has been removed. FBAU cannot invoice the customer for licensed software or equipment until it has been delivered unless the customer refuses to accept delivery, in which case FBAU may, by providing the customer at least 7 days notice, charge the customer.
Rights to suspend services	FBAU can, acting reasonably, suspend the provision of the services if the customer breaches the contract or any other contract which FBAU reasonably considers is related, but the	FBAU rights to suspend are limited to health and safety risks or failure by the customer to remedy breach of a payment obligation under the contract after being provided notice and a

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	customer must continue paying all charges during the suspensions.	period of 14 days to remedy the breach. While the customer continues to pay the charges, FBAU must reinstate services promptly once the issue is rectified.
Termination rights not mutual	FBAU has significant rights to terminate the contract and it must act reasonably when exercising those rights. The customer has only limited rights to terminate the contract.	Termination rights have been made mutual where a mutual interest exists.
Early Termination Fee	If FBAU exercises its rights to terminate the contract then the customer must pay FBAU an amount, reasonably determined by FBAU, equal to any charges billed but not yet paid, the unpaid balance of any licence fees for the remainder of the contract, any other amounts due and payable and any other resource costs, including break costs, that FBAU incurs as a result of the termination.	The circumstances in which FBAU can require payment of a 'break fee' on termination of the contract have been limited to insolvency of the customer or the customer being in fundamental breach of a small number of specific terms. Calculation of the 'break fee' includes various elements of mitigation, such as discounting charges to their net present value.
Liability Regime	The liability cap is one-way in FBAU's favour. FBAU is not liable to the customer for any delay in delivery. The customer must pay FBAU all costs and expenses incurred in exercising its contractual rights on a full indemnity basis.	The liability regime has been made mutual where a mutual interest exists. Language around not being liable for delay has been removed. Customer obligation to pay FBAU's costs and expenses limited to circumstances where the customer has breached the contract and this obligation does not apply to small business customers.
Non-reciprocal rights	FBAU enjoys the benefit of a force majeure clause but the customer does not. The customer cannot assign the contract without FBAU's consent but FBAU can assign the contract without the customer's consent.	The force majeure clause is mutual. Consent of the other party is required to assign the contract, except that FBAU can assign to a solvent and reputable related body corporate on notice to the customer.
Clauses seeking to exclude pre-contractual representations	The customer states they have read each document forming part of the contract and have based their decision to enter the contract solely on their contents. The customer further agrees they have not relied on any representation not set out in the contract and that contract forms the entire agreement between the parties.	Clauses removed.



For more information about this table or contract terms, please contact us.

**FUJIFILM Business Innovation Australia Pty Ltd**

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