

## TERMS AND CONDITIONS OF SALE

### Interpretation:

- 1.0 The following definitions and rules of interpretation apply to these Conditions.
- i) "Appointed Person" means a director or appointed manager of the Seller;
  - ii) "Buyer" means the person, firm or company who purchases the Goods from the Seller;
  - iii) "Contract" means the contract for the sale of the Goods by the Seller to the Buyer comprising the particulars of Contract and these Conditions;
  - iv) "Force Majeure Event" means circumstances beyond the reasonable control of the Seller including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), accidents, plant breakdown, restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, and seizure or other action by or compliance with an order of an apparently competent authority;
  - v) "Goods" means the goods specified in the Particulars of Contract which are to be supplied by the Seller to the Buyer;
  - vi) "Intellectual Property Right" means patents, utility models, trade or service marks, trade names, copyrights (including rights in computer software and databases) and moral rights, design rights, inventions, discoveries, confidential information, rights in know-how and all or any other industrial or intellectual property rights whether or not registered or capable of registration including, where the context allows, applications for the grant of any of the foregoing and the right to apply for any of the foregoing, and all rights or forms of protection having an equivalent or similar effect to any of the foregoing which may subsist in any part of the world;
  - vii) "Particulars of Contract" means the particulars of contract set out overleaf, attached or incorporated by reference, as the case may be; and
  - viii) "Seller" means ARCHER (S) PTE LTD, a company incorporated in Singapore under company number 200617673C.
- 1.1 A reference to a particular law is a reference to it as is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.2 Words in the singular include the plural and in the plural include the singular.
- 1.3 Condition headings do not affect the interpretation of these Conditions.



## Formation and Parties:

- 2.0 These Conditions shall apply to all contracts of sale with the Seller in relation to the goods supplied by the Seller.
- 2.1 Subject to any variation under Condition 2.3, the Contract shall be on these Conditions and the Particulars of Contract to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document).
- 2.2 No terms or conditions endorsed on, delivered with or contained in the Buyer's purchase order, confirmation of order, specification or other document shall form part of the Contract by reason of such document being referred to in the Particulars of Contract.
- 2.3 The Contract may only be varied in writing by an Appointed Person.
- 2.4 No representations or warranties relating to the Goods or advice or recommendation on the use of the Goods are binding on the Seller unless confirmed by an Appointed Person in writing in response to a written request of the Buyer specifically referring to this Condition.
- 2.5 The Contract may be cancelled by the Buyer only with the Seller's written consent which, if given, shall be on the express condition that the Buyer shall pay to the Seller a cancellation charge commensurate with the Seller's costs incurred up to the date of cancellation plus the Seller's loss of profit or, at the Seller's option, a sum equal to ten per cent of the Contract price.
- 2.6 Unless otherwise specified, quotations made by the Seller shall automatically lapse if no order is received by the Seller within 30 days after the date of quotation. None of the Seller's distributors, agents or employees are authorized to conclude contracts orally or over the telephone, and quotations, statements in price lists, sales literature and/or advertisements do not constitute offers. No contract for the sale of Goods shall be concluded until the Seller has accepted an order of the Buyer by sending to the Buyer a written acknowledgement of order signed by an Appointed Person.
- 2.7 The Buyer warrants that all information which it has given to the Seller prior to entering into the Contract is true and correct and the Seller reserves all its rights where it subsequently discovers such information is incorrect.
- 2.8 Any typographical, clerical or calculation error or omission appearing in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

## Delivery

- 3.0 If any delivery time is specified in the Particulars of Contract, this period shall commence on the later of the date of the Seller's written acknowledgement of order and the date the Seller receives all the information necessary to allow it to proceed without interruption, or if the Buyer requests any variation to the Contract, the date of the Seller's written confirmation of its agreement to such variation.



- 3.1 Although the Seller will endeavour to complete the Contract within any specified delivery time or by any specified delivery date, that time or date is an estimate only and the Seller shall not be liable howsoever for any reasonable delay in delivery.
- 3.2 Any delivery time specified shall (in any event) be extended by any period or periods equal to (i) the duration of Force Majeure Event during which the manufacture or delivery of Goods is delayed and (ii) a reasonable period of time to overcome technical difficulties connected with the manufacture or adaptation of the Goods to the Buyer's design or specification.
- 3.3 On the Seller becoming aware that the delivery of any Goods will be delayed, it shall give notice to the Buyer of the estimated duration of such delay.
- 3.4 The Seller shall be entitled to withhold delivery of any Goods if at the time delivery is to be made payment is due by the Buyer to the Seller on any account whatsoever.
- 3.5 The delivery of a greater or lesser quantity of the Goods than the quantity ordered, of other Goods not ordered, or of Goods only some of which are defective, shall not entitle the Buyer to reject Goods that were ordered and are not defective.
- 3.6 Unless otherwise stated in the Particulars of Contract, delivery shall be deemed to take place when the Goods are collected by, or on behalf of, the Buyer from the Seller's address specified in the Particulars of Contract.
- 3.7 If the Buyer fails to take delivery of the Goods in accordance with the Contract the Seller may (without prejudice to its other rights against the Buyer) store the Goods at the sole risk and cost of the Buyer.
- 3.8 The Buyer shall inspect the Goods immediately on delivery thereof and shall within five days from such delivery give notice to the Seller of any matter or thing by reason thereof the Buyer may allege that the Goods are not in accordance with the Contract or are defective in material or workmanship. If the Buyer shall fail to give such notice the Goods shall be conclusively presumed to be in all respects in accordance with the Contract and free from any defect which would be apparent on reasonable examination of the Goods and the Buyer shall, as between the Buyer and the Seller, be deemed to have accepted the Goods accordingly.
- 3.9 The Seller reserves the right to make delivery by instalments and invoice and be paid for each instalment separately. Each instalment shall be deemed to constitute a separate agreement subject to the terms of the Contract and no failure of or delay in delivery of any instalment nor any defect in the contents thereof shall entitle the Buyer to treat the Contract as repudiated with regard to any remaining instalments.

## Title and Risk

- 4.0 Title to the Goods and risk of damage to or loss of all or any Goods shall pass to the Buyer upon either: (i) the Goods being made available for collection from the Seller's premises (the anticipated date of which is stated on the relevant acknowledgement of order issued by the Seller); or (ii) the Goods being despatched from the Seller's premises (the date of which is to be stated on the relevant invoice sent by the Seller to the Buyer).



## Price

- 5.0 Unless otherwise stated in the Particulars of Contract, the Contract price for the Goods shall be:
- i) exclusive of GST, taxes or duties levied on the Seller in the Buyer's country for which the Seller shall be entitled to make additional charges, and shall be exclusive of any costs of delivery and associated packaging and insurance costs which shall be charged separately;
  - ii) subject to increase by the Seller to reflect any variation in the design, delivery schedule, quantities or specifications of the Goods made at the request of the Buyer or any delay caused by the failure of the Buyer to provide adequate information or instructions to the Seller;
  - iii) exclusive of any costs incurred by the Seller under Condition 3.7; and
  - iv) exclusive of costs to be incurred in reclaiming, returning, recycling, and/or disposing of Goods whether under the European Directive on Waste Electrical and Electronic Equipment (WEEE Directive 2002/96/EC) or otherwise.

## Payment

- 6.0 Unless otherwise specified in the Particulars of Contract payment for the Goods shall be in Singapore Dollars and made in full within 30 days of the date of invoice. No payment shall be deemed to have been received until the Seller has received cleared funds.
- 6.1 Time of payment shall be of the essence. If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to suspend any further deliveries to the Buyer, appropriate any payment made by the Buyer to such of the Goods (or the Goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer), charge the Buyer interest (both before and after any judgement) on the amount unpaid at the rate of 4 per cent per annum above our current Bank base rate from time to time and exercise a lien over any property of the Buyer then in its possession, until payment in full is made.
- 6.2 Save as aforesaid payments shall be applied to invoices in the order in which they were issued and to Goods in the order in which they are listed in invoices.
- 6.3 The Buyer shall not be entitled to make any deduction or withhold any sum from the payment from time to time due from it whether by way of set-off, counter claim, discount, abatement or otherwise.

## Warranty

- 7.0 The Seller warrants (subject to the other provisions of these Conditions) for a period of 12 months from invoice date that, in so far as the Goods are of its own manufacture, they shall be free from defects in workmanship or materials at the time of delivery. If any Goods do not conform to that warranty the Seller will at its option:



- a. replace the Goods found not to conform to the warranty and such replacements shall be supplied subject to these Conditions; or
- b. take such steps as the Seller deems necessary to bring the Goods into a state where they are free from such defects; or
- c. take back the Goods found not to conform to the warranty and refund the appropriate part of the purchase price.

#### PROVIDED THAT:

- i) the liability of the Seller shall not arise unless the Buyer demonstrates to the Seller's reasonable satisfaction that the Goods have, at all times, been properly stored and handled and subsequently have not been used or maintained in any unusual or abnormal way or in a manner contrary to any instructions or recommendations for use or maintenance provided by the Seller;
- ii) the Seller shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by or at the request of the Buyer (not being a drawing, design or specification of the Seller);
- iii) the Seller shall be under no liability in respect of any defect or failure of the Goods to operate in accordance with specifications, illustrations, descriptions or other particulars due to the combination or use of the Goods with any incompatible equipment or product;
- iv) the liability of the Seller shall in no event exceed the purchase price of the Goods;
- v) performance of any one of the above options (as limited by (iv) above) shall constitute an entire discharge of the Seller's liability under this warranty.

#### 7.1 The foregoing warranty is conditional upon:

- a. the Buyer giving written notice to the Seller of the alleged defect in the Goods, such notice to be received by the Seller within 7 days of the time when the Buyer discovers or ought to have discovered the defect and in any event within one year of delivery of the Goods;
- b. the Buyer affording the Seller a reasonable opportunity to inspect the Goods and, if so requested by the Seller, returning the allegedly defective Goods to the Seller's works, carriage pre-paid, for inspection to take place there;
- c. the Buyer making no further use of the Goods that are alleged to be defective after the time at which the Buyer discovers or ought to have discovered that they are defective; and
- d. the Buyer not altering or attempting to repair the Goods without the written consent of the Seller.

#### 7.2 In so far as the Goods are not of its own manufacture, the Seller shall endeavour to transfer to the Buyer the benefit of any guarantees or warranties given to it in respect of such Goods



- 7.3 Save as provided in this Condition 7, in Condition 2 and in section 12 of the Sale of Goods Act 1979:
- i) all conditions and warranties, express or implied, as to the quality or fitness for any purpose of the Goods are hereby expressly excluded; and
  - ii) except in respect of death or personal injury caused by the Seller's negligence, or for damage to the tangible property of the Buyer caused by the Seller's negligence, or in respect of liability under the Consumer Protection Act 1987, or in respect of fraud or fraudulent misrepresentation, the Seller shall not be liable for any loss, damage, charges or expenses which may be suffered by the Buyer, howsoever arising.
- 7.4 It is hereby expressly declared that any statements as to quality made by the Seller do not form part of the description of the Goods.
- 7.5 For the avoidance of doubt, the Seller does not represent that the Goods may not be compromised or circumvented; that the Goods will prevent any personal injury or property loss by fire, explosion or otherwise; or that the Goods will in all cases provide adequate warning or protection. The Buyer understands that properly installed and maintained fire and/or explosion safety equipment may only reduce the risk of fire, explosion or other events occurring, but it is not insurance or a guarantee that such will not occur or that there will be no personal injury or property loss as a result.

## Limits of Liability

- 8.0 The Buyer must satisfy itself of the suitability of the Goods for the purposes for which they are purchased, and must comply with any directions, instructions or warnings as to the use, storage or handling of the Goods given by the Seller. The Buyer must also ensure that the Goods comply with all local approvals and standards relating to the use to which they are to be put, and without prejudice to the generality of Condition 7, all recommendations and advice given by or on behalf of the Seller to the Buyer as to the methods of storing, applying or using the Goods the purposes to which the Goods may be applied and the suitability of using the Goods in any manufacturing process or in conjunction with any other materials are (except when given pursuant to a request of the Buyer under Condition 2) given without liability on the part of the Seller, its servants or agents.
- 8.1 Subject to Conditions 7.3 and 8.0:
- i) the Seller's total liability in contract, tort (including negligence), breach of statutory duty, misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the purchase price of the Goods; and
  - ii) the Seller shall not be liable to the Buyer under or in connection with the Contract for any loss of income, loss of actual or anticipated profits, loss of business, loss of contracts, loss of goodwill or reputation, loss of anticipated savings, loss of damage to or corruption of data, or for any indirect or consequential loss or damage of any kind, in each case howsoever arising, whether such loss or damage was foreseeable or in contemplation of the parties and whether arising in or for breach of contract, tort (including negligence), breach of statutory duty or otherwise.



- 8.2 Nothing in these Conditions or in the Particulars of Contract shall affect or limit the validity or application of any customer warranty with the benefit of which any of the Goods are sold and if the Buyer, being an end-user, is able to benefit from such a warranty the terms thereof shall prevail over the terms of these Conditions and the Particulars of Contract.

## Bankruptcy and Liquidation

- 9.0 This Condition applies if the Buyer becomes (or appears to the Seller to be about to become) bankrupt, or goes (or appears to the Seller to be about to go) into liquidation, has a petition presented or threatened for its winding-up, suspends payment of debts or makes any arrangement with creditors, fails to pay in accordance with the terms of the Contract, has an administration order made or a petition for such an order presented or threatened, has a receiver appointed over all or any part of its assets or is answerable under the law of the country having jurisdiction over the Buyer or its assets for any of the foregoing, or is in breach of any other term of the Contract.
- 9.1 If this Condition applies, then without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without liability to the Buyer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

## Intellectual Property

- 10.0 The Buyer acknowledges that any and all Intellectual Property Rights used or embodied in or in connection with the Goods or any parts thereof in which the Seller has an interest, is and shall remain vested at all times in the Seller. The Buyer shall not at any time in any way question or dispute the ownership of any such rights.
- 10.1 The Buyer acknowledges that any and all Intellectual Property Rights created in the performance of, or as a result of the Contract (whether new or by way of development of an existing right) shall belong to the Seller unless otherwise agreed in writing by an Appointed Person.
- 10.2 The Buyer shall indemnify the Seller fully against all liabilities, costs and expenses which the Seller may incur as a result of work done in accordance with the Buyer's specifications (including specifications of third parties used at the request of the Buyer) which infringe any Intellectual Property Right of any third party.
- 10.3 The Seller shall defend at its expense any claim (or related action) brought against the Buyer alleging that the Goods or any parts thereof supplied under the Contract infringe any Intellectual Property Right and shall pay all costs and damages finally awarded provided that the Buyer gives the Seller (i) prompt written notice of such claim, (ii) all relevant information relating to such claim and (iii) reasonable assistance and sole authority to defend or settle such claim. In the defence or settlement of any such claim, the Seller may obtain for the Buyer the right to continue using any Goods or replace or modify them so that they become non-infringing or if such remedies are not reasonably available, grant the Buyer a credit for any such Goods as depreciated and accept their return. The foregoing provisions of this Condition 10.3 shall not apply if the alleged infringement occurs in circumstances where the Buyer is liable to indemnify the Seller pursuant



to Condition 10.2 or if the alleged infringement is based upon the use or sale of any of the Goods in combination with other products or devices not furnished by the Seller. The Seller disclaims all other liability for infringement of any patent or other intellectual property right including any incidental or consequential loss or damage.

## Software

- 11.0 The Seller hereby grants to the Buyer a non-exclusive and non-transferable licence to use any computer software (“the Software”) embedded in or forming an integral part of the Goods in the form in which it is embodied in or integrated in the Goods at the time of delivery to the Buyer for use in conjunction with the Goods but subject to the condition that the Goods are used only for their intended purpose.
- 11.1 Except as expressly permitted by this Condition 11 and save to the extent and in the circumstances expressly required to be permitted by law, the Buyer shall not rent, lease, sub-licence, loan, copy, modify, adapt, merge, translate, reverse engineer, decompile, disassemble or create derivative works based on the whole or any part of the Software.
- 11.2 The Buyer shall be entitled to transfer the benefit of the licence granted pursuant to Condition 11.0 (“the Licence”) and the right to transfer the Licence in the terms of this Condition 11.2 to any purchaser of the Goods provided the purchaser agrees before making such purchase to be bound by the terms of this Condition 11. If the purchaser does not accept such terms then the Licence shall automatically and immediately terminate.
- 11.3 The Licence shall remain effective without limit in time until it is terminated in accordance with Condition 11.2 above or until the Buyer terminates it by erasing or destroying the Software. The Licence shall also terminate automatically and immediately if the Buyer fails to abide by the terms of this Condition 11. Upon termination of the Licence, for whatever reason, the Buyer shall deliver to the Seller the media on which the Software is recorded or embedded (and all copies thereof (if any) in the Buyer’s possession) and shall certify to the Seller that the same has been done.

## Compliance with Laws

- 12.0 The Buyer shall be responsible for compliance with all Singapore local laws and regulations applicable to the installation, use, import, export and re-export of the Goods. The Buyer shall also comply with all applicable export control laws and regulations of the country having proper jurisdiction, and shall obtain all necessary export and re-export licences in connection with any subsequent export, re-export, transfer and use of all Goods and Software delivered under the Contract.
- 12.1 Unless otherwise stated in the Particulars of Contract and to the fullest extent permissible by law, the financing of and collection, storage, processing, recycling and/or disposal of the Goods (whether under the WEEE Directive 2002/96/EC or otherwise) is the responsibility of the Buyer and the Buyer accepts such responsibility in accordance with all laws and regulations and shall indemnify the Seller against all related costs, liabilities and expenses.





## Indemnities

- 13.0 The Buyer shall indemnify the Seller in respect of all damage injury or loss occurring to any person or property and against all actions, suits, claims, demands, charges or expenses in connection therewith arising from the condition or use of the Goods in the event that the damage injury or loss shall have been occasioned partly or wholly by (i) the carelessness of the Buyer and its servants, contractors or agents or (ii) by any breach by the Buyer of its obligations to the Seller hereunder or (iii) the combination or use of the Goods with any incompatible equipment or products that may be connected to or used with the Goods.
- 13.1 The Buyer undertakes that it shall not solicit purchasers for the Goods outside countries which for the time being are Member States of the European Economic Area ("EEA State") or sell the Goods to any person who it knows is intending to use or resell the same outside the EEA States PROVIDED THAT nothing in this clause or elsewhere in EEA State or to any person intending to use or resell the same in any EEA State.

## Notices

- 14.0 Any notice required or authorised to be given hereunder shall be in writing and shall be served by registered mail sent to the address specified in the Particulars of Contract or any other address notified for the purpose and shall be deemed to be served seven days after proven despatch, provided that any other mode of service shall be valid if the said notice or other communication is actually received by the addressee.

## Force Majeure

- 15.0 The Seller reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Buyer (without liability to the Buyer) if the Seller is prevented from or delayed in the carrying on of its business due to a Force Majeure Event, provided that, if the event in question continues for a continuous period in excess of 120 days, the Buyer shall be entitled to give notice in writing to the Seller to terminate the Contract.

## Waiver

- 16.0 Failure or delay by the Seller in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.
- 16.1 Any waiver by the Seller of any breach of, or any default under, any provision of the Contract by the Buyer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.

## Assignment

- 17.0 The Seller may assign the Contract or any part of it to any person, firm or company.
- 17.1 The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Seller.



## Contracts (Rights of Third Parties) Act 1999

18.0 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

## Construction and Jurisdiction

19.0 Each right or remedy of the Seller under the Contract is without prejudice to any other right or remedy of the Seller whether under the Contract or not.

19.1 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

19.2 The proper law of the Contract shall be English law and the English courts shall have jurisdiction over any disputes arising thereunder.

