

# ***ARCHIE***

## **GENERAL TERMS AND CONDITIONS**

of Archie Europe, a private company with limited liability, having its registered office in Purmerend, the Netherlands

## **TERMS OF USE OF THE SOFTWARE LICENSE**

of Archie Europe bv, having its registered office in Purmerend, the Netherlands

# GENERAL TERMS AND CONDITIONS

of Archie Europe, a private company with limited liability, having its registered office in Purmerend, the Netherlands

**ARCHIE**

hereinafter to be referred to as "Archie"

## 1 GENERAL

- 1.1 The filing of these General Terms and Conditions at the Registry of the Court of Haarlem, the Netherlands, has rendered all previous terms and conditions and stipulations of Archie inapplicable.
- 1.2 Unless expressly agreed otherwise and confirmed by Archie in writing, all orders shall be fulfilled only on the conditions set out below.
- 1.3 All deliveries shall be deemed to have been made in Purmerend, and all payments are to be made in Purmerend.
- 1.4 Arrangements made with Archie employees shall not bind Archie, unless these arrangements have been confirmed by Archie in writing or are actually implemented.
- 1.5 The mere fact of placing an order, of whatever nature, with Archie, shall constitute acknowledgement by the client of the applicability of these General Terms and Conditions, unless these terms and conditions have been explicitly rejected by the client in writing; a mere reference to the client's own terms and conditions, or a standard clause on his stationery or in his own terms and conditions providing for the exclusive effect of his own terms and conditions shall not suffice.
- 1.6 If variations have been agreed upon regarding certain matters provided for by these terms and conditions, these General Terms and Conditions shall continue to govern the remainder of that agreement. Agreed variations shall in no event apply to more than one order, unless they are re-confirmed in writing on each occasion.
- 1.7 These terms and conditions shall govern all agreements to be concluded between Archie and its clients and any resulting commitments, with the exclusion of other terms and conditions which clients may declare applicable, unless agreed otherwise in writing. The term "client" shall be understood to mean any party wishing to place, or placing, an order with Archie, any party wishing to use, or using, in whatever manner, any Archie software products (hereinafter to be referred to as the "Software") or any third-party software to be supplied by Archie, any party wishing to use, or using, its service relating to the software, or any party wishing to enter, or entering into, any agreement of any other nature with Archie.
- 1.8 Any conditions, stipulations, etcetera, agreed upon with agents, representatives or other intermediaries that differ from these terms and conditions shall not be binding on Archie unless they are explicitly confirmed by Archie in writing.
- 1.9 Whenever the terms "in writing" or "written" are used in these terms and conditions, an email message sent by the client shall be considered equivalent to a written message only if, on behalf of the board of directors, Archie indicates in writing or by email to agree to the content of the email or actually implements the content of the email.
- 1.10 Outgoing emails from Archie stating that the email in question does not create any rights shall not bind Archie in any way.

## 2 QUOTATIONS

- 2.1 Unless expressly agreed otherwise, all offers shall be non-binding. Archie shall not be bound until after it has confirmed the order in writing or by email.
- 2.2 If an order is quoted based on actual costs, the prices quoted shall merely serve as a guide; the

actual hours worked by Archie or by any third parties engaged by Archie, and the actual costs incurred by Archie shall be invoiced.

- 2.3 A compound quotation shall not create any obligation to deliver part of the order against a corresponding part of the price quoted for the entire order.
- 2.4 Unless the order confirmation explicitly states otherwise, all prices quoted by Archie shall be exclusive of Netherlands VAT, packaging, courier, and shipping costs, parking charges, and the like, and/or other taxes, charges or duties attached to the Software and/or services, including unforeseen external costs.
- 2.5 The prices in the quotations shall apply exclusively to the quantities specified.
- 2.6 If data, information carriers and the like have been submitted for only part of the order to be fulfilled, Archie shall not be bound by the price quoted for the entire order if it appears that the part of the order for which no data have been submitted require proportionally more work than the part for which data were submitted.
- 2.7 If no order is given, Archie reserves the right to invoice all or part of the design, analysis and calculation costs incurred, however only if an in-depth study of the project can be said to have been conducted, in which case the costs shall be charged in consultation with the client, based on use and on an equitable basis.
- 2.8 In addition to the relevant information listed in the quotation, catalogues and brochures, the standard and/or customary tolerances shall apply to all goods offered. Images and/or descriptions in the quotation, catalogues and brochures are therefore subject to minor deviations. Such deviations shall in no event discharge the client from his obligations under the agreement.
- 2.9 Archie explicitly reserves the right to change the prices quoted without prior notice, and even after sending the order confirmation; this means that after conclusion of the agreement and before delivery has been made in full, Archie shall be entitled to pass on to the client any increases in purchase prices, wages, social employer's contributions and/or other conditions of employment, as well as increases in other rates, duties, expenses, levies and taxes, and any changes in exchange rates that increase Archie's costs.
- 2.10 Any installation work for the Software shall be included in the prices quoted only if and to the extent that this is explicitly stated.
- 2.11 Any images, descriptions, etcetera provided with the quotations are merely provided to give a general impression. Any changes resulting in the actual versions deviating to some extent from such models, images or descriptions, but not creating a material change in the technical and aesthetic design, shall not oblige Archie to pay any compensation, and shall not entitle the client to refuse receipt or payment.
- 2.12 Quotations and deliveries of non-standard software and customized solutions shall be based on such as data as furnished by the client, and shall relate only to applications and specifications mentioned by Archie in writing. Any discussions regarding the operation and content of such software shall be recorded in writing, and signed by the client for approval. In the absence of such records, any development of such non-standard software and customized solutions shall be at the client's risk. Any changes to records already approved shall be invoiced in addition to the original fee, based on actual costs.

- 2.13 Any agreement to develop non-standard software and customized solutions should be regarded as a best efforts agreement and not as a results agreement. All development costs unforeseeable at the time the quotation was made, that are incurred as a result of changes to the client's specifications during the development, or that may arise during the implementation of the developed software, are therefore passed on to the client.

## 3 ORDERS

- 3.1 Any orders not given in writing may still be cancelled by the client within seven days of giving the order.
- 3.2 After having given an order, the client must notify Archie in a timely fashion and in writing of any changes he may require in the fulfillment of that order. If these changes are communicated in person, by email or by telephone, the risk of the implementation of the changes shall be for the client, unless Archie has confirmed these changes in writing.
- 3.3 In the event that the client cancels the order, either in full or in part, he shall be obliged to pay the full fee for the agreed service or delivery.
- 3.4 Services agreed upon may be rescheduled free of charge up to ten days prior to the commencement of the work in question; if services are rescheduled between ten and five days prior to the commencement of the work, 25% of the costs of the work shall be charged; if services are rescheduled within five days prior to the commencement of the work, 50% of the costs of the work shall be charged. Any work agreed upon must be purchased within one year of the relevant agreement, failing which the right to performance of the work shall end, whereas the fee agreed upon shall remain payable in full.
- 3.5 Any changes to the original order, of whatever nature, communicated either verbally or in writing by or on behalf of the client, resulting in costs higher than were foreseeable at the time the quotation and/or order confirmation were prepared, shall be invoiced to the client in addition to the original fee.
- 3.6 Any changes to and/or cancellations of orders shall bind Archie only after written acceptance.
- 3.7 Archie reserves the right to carry out more work than set out in the written order or in the order confirmation, and to invoice such work to the client, if this work is in the interests of the client and/or for proper fulfillment of the order. The client shall be notified of the performance of such additional work as soon as possible.
- 3.8 Unless expressly agreed otherwise, orders causing repetitive work, whether or not of a slightly different nature, to be performed on a regular basis shall be deemed to be open-ended orders.
- 3.9 Open-ended orders may be terminated by either party subject to a notice period of at least three months.
- 3.10 Any agreement entered into for a definite period of time shall be automatically renewed by the same period as initially agreed, unless the client gives written notice of termination at least three months before the end of the term of the agreement.

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## 4 DELIVERIES/FULFILLMENT OF THE ORDER

- 4.1 Where data are provided by the client, Archie shall not be liable for the completeness or quality of the data provided, except in the case of intent or negligence on the part of Archie, the burden of proof of which will fall on the client.
- 4.2 Each partial delivery, including the delivery of parts of a composite order, may be invoiced, in which case such partial delivery shall be regarded as a separate transaction, and payment is to be made in accordance with the provisions of article 10.
- 4.3 Subject to the provisions of article 5, any delays shall not be for the account of Archie, unless the delay is caused by Archie.
- 4.4 Orders shall be fulfilled within the time customary for the order in question. If the fulfillment of an order needs to be expedited, overtime and/or any other additional costs incurred may be charged. Delivery times specified or agreed upon shall in no event constitute deadlines, even if no approximate delivery times have been specified or agreed upon. Failure to meet the delivery date shall not oblige Archie to pay any compensation.
- 4.5 Any materials and/or data to be processed by Archie shall be delivered carriage paid at the address and the times to be specified by Archie.
- 4.6 The periods agreed upon shall apply only if and to the extent that the materials to be processed, as well as the data required for the fulfillment of the order, are provided to Archie at the agreed time, and the work to be executed by the client himself or by third parties at the client's expense has been executed on time. If, as a result of a delay in the delivery or execution of work by the client, the order can be fulfilled only by making additional arrangements, such as additional transport, overtime, or express delivery, Archie shall be entitled to do so without prior consultation with the client, and the costs so incurred shall be for the client's account. In the event of a delay in the delivery by the client, Archie shall be entitled to change the date of fulfillment of the order. The client shall be responsible for checking the timely delivery of the materials to be processed and the data required for the fulfillment of the order.
- 4.7 The delivery of the Software shall only constitute the right to the nonexclusive use of the relevant programs by the agreed number of users at the locations agreed upon.
- 4.8 All delivery times specified by Archie shall always be approximate times and shall not be binding. The delivery time shall commence as soon as the order confirmation has been sent or the order has actually been processed by Archie and any data and materials required in Archie's opinion have been supplied to it by the client. Failure to meet the delivery date shall in no event release the client from his obligations arising from the agreement, or entitle the client to demand dissolution of the agreement and/or to claim damages.
- 4.9 If the failure to meet the delivery date is such that the client cannot reasonably be required to maintain the agreement, the client shall, however, be entitled to cancel the order in question, provided he notifies Archie in writing, without prejudice to Archie's right to still deliver the goods concerned within four weeks of receipt of such notification. The client may demand that Archie immediately gives its decision as to whether it wishes to use this right.

- 4.10 The client may not assign his rights under an agreement with Archie to third parties without Archie's express permission.
- 4.11 The client himself shall be responsible for backing up the data on his own systems. Archie can in no event be held liable for any loss of data during or as a consequence of maintenance work or other work.
- 4.12 If the client fails to strictly perform any of his obligations under an agreement with Archie, or if during or after the fulfillment of an order it appears that the client has supplied incorrect data or has withheld data, Archie shall be entitled to suspend the performance of all of its obligations towards the client, and even to terminate all agreements with the client, either in full or in part, without notice of default and/or judicial intervention being required, while retaining its right to compensation. Any amounts payable to Archie by the client shall become due and payable forthwith.
- 4.13 Without having to notify or consult with the client, Archie shall be entitled to outsource all or part of the order to, or to have all or part of the order fulfilled by, third parties not employed by Archie, if in Archie's opinion this will promote a proper or efficient fulfillment of the order.
- 4.14 During the fulfillment of the order, and for a period of twelve months after the fulfillment of the order, the client may not in any way enter into an employment agreement with any employees assigned to the client by or on behalf of Archie, subject to a non-negotiable penalty of EUR 1,000 for each violation for each week that the breach continues, without prejudice to Archie's right to claim compensation under the law.
- 4.15 Archie undertakes to carry out the work ordered to the best of its knowledge and ability, but shall not be liable for not achieving the client's intended outcome.
- 4.16 If, during the fulfillment of an order accepted by Archie, it appears that the order cannot be fulfilled because of circumstances unknown to Archie or because of force majeure, Archie shall be entitled to demand that the order is changed in order to allow it to be fulfilled. Any upward or downward cost variations as a result of such change shall be settled between the parties, while the client shall be obliged to pay for any work already performed by Archie that has proven useless.

## 5 FAILURE TO MEET THE DELIVERY TIME

- 5.1 If progress in the execution of the work is delayed by the client or because of force majeure occurring on his side, Archie may invoice part of the price quoted for the overall work in proportion to the finished part, as well as the costs already incurred for the entire order, and it may do so at the times on which invoicing would have taken place if no delay had occurred. If these times have not been explicitly agreed on in advance, such sums may be invoiced immediately after the end of the period ordinarily required to fulfill the order in question.
- 5.2 Disruptions in business operations because of force majeure (which shall be understood to mean, without limitation: war, mobilization, civil commotion, floods, suspended air traffic, blocked shipping traffic and other traffic congestion, supplies delayed, restricted or stopped by public utility companies or other energy or data communication companies, the occurrence of viruses unknown up to that point, fuel shortage, fire, engine breakdowns and other accidents, strikes, lockouts,

action by trade unions, which render production impossible, government measures, non-delivery of required software to Archie by third parties, and other unforeseen circumstances, also in the country of origin of the software, that disrupt normal business operations and delay fulfillment of the order or render fulfillment reasonably impossible), shall release Archie from observing the agreed period or from the obligation to fulfill the order, without the client being able to exercise any right to claim compensation for costs, losses or interests.

- 5.3 In the event of force majeure, Archie shall notify the client without delay, in which case the client shall be entitled, for a period of eight days after receipt of such notification, to cancel the order by written notice, under the obligation, however, to compensate Archie for the part of the order already fulfilled. Archie shall also be entitled to invoke force majeure if the situation causing the force majeure occurs after its performance should have been delivered.

## 6 SITE HOSTING/APPLICATION USE

- 6.1 Unless agreed otherwise, any site hosting/application use agreement shall be entered into for a period of one year and shall be automatically renewed by the same period. Notice of termination of the original or renewed agreement must be given by the client at least three months before the end of the term of the agreement.
- 6.2 Archie shall be responsible for the availability of the servers and the network, in accordance with the agreed service level, and it will make an effort to meet this service level as well as possible. Archie does not, however, accept any responsibility whatsoever if at any time this level cannot be achieved.
- 6.3 Archie shall not be liable for failure or inaccessibility resulting from internet failures, failures at other providers, power failures, and similar failures.
- 6.4 The client shall not use the application and/or the disk space made available for any of the following purposes: a. to perform any acts and/or to display any behaviors that are in violation of the applicable statutory provisions, netiquette or the guidelines of the Netherlands Advertising Code Committee; b. to send large numbers of unsolicited email messages with the same content and/or to post unsolicited messages with the same content in large numbers of newsgroups on the Internet (spamming); c. to infringe copyrighted works or to otherwise act in breach of intellectual property rights of third parties; d. to publish or distribute illegal texts and/or video or audio material, including child pornography and discriminatory statements; e. sexual harassment or any other harassment of people; f. unauthorized penetration of other computers or sites on the Internet or an intranet, where the security is breached and/or access is acquired through a technical intervention with the help of false signals or a false key, or by assuming a false identity (hacking); g. to separate computer or other processors that continue to be active at Archie's premises or on the Internet after the connection (whether online or not) with Archie has been terminated; h. to distribute computer viruses.
- 6.5 The client shall not use the available disk space and/or Software to store or distribute erotic, pornographic, racist, or inflammatory material, illegal software, illegal MP3 files, or similar material.

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- 6.6 In the instances listed below, Archie shall be entitled to block the client completely or to remove the client from the server with immediate effect, without prior warning and without being required to state the reasons, in which instances the client shall not be able to exercise any right to claim compensation and shall be obliged to compensate Archie for any and all damage suffered by Archie or by third parties as a result of the violation, and any unused subscription fees shall be refunded or set off: a. if the client violates, or is strongly suspected of violating, the provisions of paragraphs 6.4 and 6.5; b. if all or part of the client's site causes or threatens to cause Archie's server to go down or to become inaccessible; c. if it appears that the client has provided false and/or incorrect personal or company details; d. if it appears that the client has entered into the agreement under false pretences; e. if the client does not meet his payment obligations.
- 6.7 Archie has no involvement in the information placed on the site or distributed via the servers, and shall not be liable for any consequences thereof. Similarly, Archie shall not be liable for any leaking of confidential data.
- 6.8 The client shall not rent out the application to third parties, or allow the application to be used by third parties in any other manner.
- 6.9 Where the volume of data traffic generated or used by the client exceeds the volume specified in the agreement, Archie shall be entitled to adjust the fees accordingly.
- 6.10 Archie shall arrange for regular backups to be made of all files on the server, but shall not in any way be liable for any data loss or for any damage ensuing from such loss.
- 6.11 Archie may, without prior publication, decommission the applications and/or restrict their use (whether or not on a temporary basis) where this is necessary to carry out required maintenance or to improve the system or the application.
- 6.12 Temporary or reduced unavailability of the application shall in no event entitle the client to repayment of the rental price for the application.
- ## 7 COMPLAINTS AND WARRANTY
- 7.1 Archie shall not be liable for misprints, typing errors, miscalculations or ambiguities in quotations, order confirmations and/or prospectuses, or for the consequences thereof. In the event of conflicting interpretations of quotations, order confirmations or prospectuses, Archie's interpretation shall be binding.
- 7.2 Complaints must be lodged in writing and within eight days of the fulfillment of the order.
- 7.3 Any defects that could in all reasonableness not have been detected within the period mentioned in the previous paragraph must be reported to Archie immediately following detection, and the use of the goods in question must be limited as much as possible.
- 7.4 Any defects in part of the goods delivered shall not constitute a right to refuse the entire performance delivered.
- 7.5 The client shall render all such assistance in the investigation of the complaint as Archie may require, including by providing data and/or by enabling Archie to carry out, or arrange for, an onsite investigation into the quality and/or quantity. Archie shall at all times be entitled to demonstrate that the Software it has delivered is working properly by performing a test run on or using hardware and/or software owned by or to be designated by Archie.
- 7.6 If Archie considers a defect in the performance delivered proven, it may, at its option, redeliver the defective performance free of charge, or offer a discount on the agreed invoice amount, which discount shall be determined by agreement with the client.
- 7.7 Archie shall not accept any liability for defects in deliveries caused by or arising from actions or negligence on the part of the client or third parties, or external causes.
- 7.8 Archie does not have any obligations other than those arising from this article; in particular, Archie shall in no event be liable for any direct or indirect loss of profits or consequential damage arising from non-fulfillment, incorrect fulfillment or a delay in the fulfillment of the order.
- 7.9 A complaint regarding certain work activities or deliveries shall not suspend the client's payment obligation relating to those or other activities or deliveries.
- 7.10 Where goods are delivered by third parties through the intermediary services of Archie, Archie shall in no event be obliged to provide a more comprehensive warranty for those goods than the warranty provided by the supplier of the goods delivered.
- 7.11 Any software or components thereof replaced by Archie in fulfillment of its warranty obligation must be decommissioned and removed from the system by the client.
- 7.12 Any changes made to the Software by the client or third parties without Archie's prior knowledge and permission shall void the warranty.
- 7.13 Where standard third-party software or components of third-party software is delivered as part of Archie's Software, Archie shall in no event be obliged to provide a more comprehensive warranty than the warranty provided to Archie by the producer of the software delivered.
- 7.14 If the Software is used in combination with software or hardware not appropriate for that purpose, the client shall not be able to make a claim under any warranty.
- 7.15 No complaints may be lodged about noticeable external defects, other than immediately upon delivery.
- 7.16 The client shall in no event be able to claim dissolution of an agreement by virtue of complaints or defects.
- ## 8 LIABILITY
- 8.1 Archie shall not be liable for any damage, by whatever name or cause, incurred other than as a result of its own intentional act or gross negligence, the burden of proof of which shall fall on the client, and its liability shall be limited to the amount for the work to be carried out or the deliveries to be made by Archie, or a proportional part thereof.
- 8.2 Archie shall not be liable for any loss of profits or consequential damage as a result of defects in the deliveries made by Archie or through Archie's intermediary services.
- 8.3 Archie shall not be liable for any damage caused by negligent or careless use, by any use contrary to the user instructions of the deliveries, or by their unsuitability for the purpose for which the client has purchased and/or uses them.
- 8.4 Archie shall not be liable for the presence of any viruses on the information carriers supplied by it or in data or software delivered or downloaded over the Internet. The client should himself test the supplied information carriers, data or software for the presence of viruses.
- 8.5 The client shall indemnify and hold harmless Archie from and against all actions for damages instituted against Archie by third parties with respect to damage caused by or with the deliveries.
- 8.6 If an order to make a delivery or to carry out work is given for the account of two or more natural persons or legal entities, each of these persons/entities shall be jointly and severally liable for the complete performance of the ad hoc obligation resulting from the agreement.
- 8.7 By giving an order to develop software, the client warrants that no third-party copyrights or industrial property rights are infringed, and indemnifies Archie, in legal and other proceedings, against all financial and other consequences ensuing from the development of the software.
- 8.8 All Software, non-standard software and customized solutions are delivered "as is"; Archie shall not be liable for any damage resulting from improper use or the performance of the software.
- 8.9 The client shall develop an acceptance test for non-standard software, customized solutions, and precursors and test versions of new releases. Archie shall not be liable for any defects and/or flaws in the developed software, in so far as they were not detected during the acceptance test.
- 8.10 The presence of any errors (bugs) in software that do not hinder the functionality of the Software shall in no event entitle the client to reject the relevant Software either in full or in part. Archie's liability shall in no event extend beyond remedying such errors in a subsequent version of the Software.
- 8.11 The presence of any errors (bugs) in standard third-party software that do not hinder the general functionality of the software shall in no event entitle the client to reject the relevant software either in full or in part. Archie's liability shall in no event extend beyond attempting to induce the producer of the software concerned to remedy such errors in a subsequent version of the software.
- 8.12 Archie undertakes to treat confidentially the data, documents, and designs made available by the client and the materials entrusted to it, and to look after them with due care, but shall not be liable for their loss as a result of fire, theft or breakage, etcetera, insofar as this is not covered by the insurance. Where valuable or irreplaceable unique copies are to be used, the client shall insure these at his own expense and risk.
- 8.13 Archie undertakes to give advice to the best of its ability and in good faith, but shall not be liable for loss or damage directly or indirectly resulting from the content of its advice.
- 8.14 Any claims for damage must be submitted to Archie in writing immediately after the occurrence of the damage.
- 8.15 The limitations of the liability for damage, as contained in these General Terms and Conditions, shall not apply if the damage is due to an intentional act or gross negligence on the part of Archie or its employees.

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## 9 PROPERTY RIGHTS AND COPYRIGHT

9.1 Notwithstanding the actual delivery or availability, the right to use the Software to be delivered shall pass to the client only if the client has performed all of the following obligations arising from all agreements entered into with Archie: – payment of any fees relating to the Software supplied itself; – payment of any fees relating to the services supplied or to be supplied by Archie under the agreement(s); – payment of any claims for the client's non-performance of any agreements.

9.2 Following payment in full in accordance with the provisions of paragraph 9.1, the client shall have the agreed right to use the deliveries, with due observance of the provisions of the articles below.

9.3 Archie shall retain the copyright in the designs, descriptions, images and calculations made or realized by Archie, even if they are made or realized under an order given by the client.

9.4 The client undertakes to use the Software, non-standard software, customized solutions, system designs, system and program descriptions, documentation, and the like solely for his own purposes, and not to make them available to any third parties, in whatever manner and whether or not in exchange for payment, and not to otherwise act, or fail to act, in such a way that may put them at the disposal of any third parties.

9.5 All rights of an industrial or intellectual nature, such as copyrights, relating to the software, system designs, system and program descriptions, documentation, working procedures, advice, etcetera, originating from or used by Archie, shall become and remain the explicit and exclusive inalienable property of Archie, both during and after fulfillment of the order, irrespective of the contribution made to the realization of the computer programs, system designs, working procedures, advice, etcetera, by the client himself or any third parties engaged. The exercise of these rights, including publication or transfer of data, shall be explicitly and exclusively reserved to Archie, both during and after fulfillment of the order.

9.6 The client shall not be permitted to change, repeat or multiply the implementation of a design made by Archie, even it concerns only part of a design made by Archie, without the express written permission of Archie. Archie may attach conditions to such permission, including payment of monetary compensation.

## 10 PAYMENT

10.1 Archie may demand payment, payment in advance or payment in installments if fulfillment of an order covers a period of more than one month, or if, in Archie's opinion, the amount involved in the order calls for such a payment condition. Irrespective of the payment condition agreed on, Archie shall be entitled to demand, either in advance or during the execution of an order, sufficient security for payment.

10.2 All payments are to be made without reduction or set-off. All payments are to be made net in cash on delivery, or by payment or transfer into a bank or giro account designated by Archie within 14 days of the invoice date. This payment period shall constitute a deadline.

10.3 If a credit of more than fourteen days after the invoice date is either agreed to or taken wrongfully, the client shall owe interest on the invoice amount at 1% per month or part of a month, from the date the invoice amount becomes due; after

each one-year period, the client shall also owe such interest on the interest then due. If and to the extent that the statutory commercial interest rate is higher than the rate stated here, the statutory commercial interest shall be charged.

10.4 All legal and other costs to be incurred by Archie in exercising its rights shall be for the account of the client. These costs shall be at least 15% of the amount involved, subject to a minimum of EUR 250.

10.5 If the client has the order carried out by Archie on a subcontracting basis, the client shall, on Archie's demand, assign his third-party claims resulting from this transaction to Archie. The client hereby irrevocably authorizes Archie to collect the debt or debts in question.

10.6 Irrespective of the provisions relating to the payment period in paragraph 2 of this article, Archie shall be entitled to demand cash payment, or to demand that the client provides security for the payment, or that the client pays a specific part (to be determined by Archie) of the agreed price in advance, before delivery is made, whenever Archie sees reason to make such a demand, and prompt payment shall be required, despite a payment period having been agreed.

## 11 DISPUTES

11.1 A dispute shall be deemed to have arisen if either party so declares.

11.2 All agreements and transactions made by Archie shall be governed exclusively by the laws of the Netherlands.

11.3 Any disputes of whatever nature shall be submitted to the competent Netherlands court in Haarlem, to the exclusion of all other arbitration, advisory and judicial bodies.

## 12 FINAL PROVISIONS

12.1 All transactions made by Archie relating to the supply of Software shall also be governed by Archie's Terms of Use of the Software License, which are an integral part of these General Terms and Conditions as if incorporated verbatim therein, and which have been filed at the Registry of the Court in Haarlem (the Netherlands) at the same time as these General Terms and Conditions.

12.2 All matters not provided for by these General Terms and Conditions shall be resolved exclusively by Archie.

# TERMS OF USE OF THE SOFTWARE LICENSE

of Archie Europe B.V., having its registered office in Purmerend (the Netherlands)

**ARCHIE**

hereinafter to be referred to as "Archie"

## 1 GENERAL

- 1.1 The delivery of standard or customized software by Archie, hereinafter to be referred to as "Software", shall be subject to the provisions set out in these Terms of Use of the Software License, hereinafter to be referred to as the "Terms of Use". These Terms of Use shall be governed by Archie's General Terms and Conditions, which form an integral part of these Terms of Use.
- 1.2 The mere fact of commissioning any Software produced or delivered by Archie constitutes acknowledgement by the client of the applicability of Archie's Terms of Use and General Terms and Conditions.

## 2 USE

- 2.1 Archie grants the client a nonexclusive, nontransferable license to use the Software, which license is accepted by the client, based on an order or agreement signed by the client and accepted by Archie.
- 2.2 The client shall be entitled:
  - a. to use the Software for the purpose for which this Software has been developed;
  - b. to receive and use a copy of the Software and any accompanying documentation only for such number of users and on such locations as referred to in the order or agreement;
  - c. to use the Software only for the legal form(s) and/or business unit(s) referred to in the order or agreement;
  - d. to use the Software only in accordance with the Terms of Use and the provisions of paragraph 2.3 of these Terms and Conditions;
  - e. to receive service and support under Archie's warranty obligation during such period as specified in the order or agreement;
  - f. to receive renewed versions of the Software, if and to the extent provided for in the order or agreement;
  - g. to set up a testing or acceptance environment.
- 2.3 The term "use", as used in these Terms of Use, shall have the following meaning and content:
  - a. to use all or part of the Software by loading, transferring, copying or sending it on or within the client's computer system;
  - b. to incorporate all or part of the Software in machine-readable form into another software program;
  - c. to copy all or part of the Software, albeit that copies of the Software are permitted only for backup and testing purposes, and subject to the condition that there will be no more than two copies of the Software without Archie's prior written approval;
  - d. to store all or part of the Software on the computer system or any other storage unit;
  - e. to use, but not to copy, the instruction and documentation material and other information carriers relating to the Software.
- 2.4 These Terms of Use shall apply only if the Software is used in combination with hardware and software for which the Software has been released by Archie.
- 2.5 The Archie Software has built-in mechanisms to check whether these Terms of Use are complied with. Non-compliance with the Terms of Use, Archie's General Terms and Conditions, or an agreement entered into between the parties may result in Archie decommissioning the Software. By agreeing to these Terms of Use, the Client consents to such checks and to such decommissioning, where appropriate.

## 3 INTELLECTUAL PROPERTY

- 3.1 The intellectual property rights relating to the Software and documentation, designs, sketches and calculations are owned by Archie or its licensors or suppliers, even if they have been developed on the client's instructions.
- 3.2 The technologies and processes developed by Archie and incorporated in the Software shall be the property of Archie, and shall, in principle, not be made available to the client.
- 3.3 By agreeing to this user agreement, the client undertakes not to attempt to remove the Archie name or any other trademark incorporated in the Software, or to make any changes to the Software in any manner.
- 3.4 The client undertakes to use the designs, computer programs, system and program descriptions, documentation, drawings, sketches and calculations solely for his own purposes, and not to make them available to any third parties, in whatever manner and whether or not in exchange for payment, and not to otherwise act, or fail to act, in such a way that may put them at the disposal of any third parties.

## 4 LIABILITY/WARRANTY

- 4.1 Archie accepts no liability for damage arising or resulting from the use of the Software, including any damage suffered by the client during the application or use of processing results of the software.
- 4.2 The presence of any errors (bugs) in the Software that do not hinder the general functionality of the Software shall in no event entitle the client to reject the relevant Software either in full or in part. Archie's liability shall in no event extend beyond attempting to remedy such errors in a subsequent version of the Software.
- 4.3 Any errors in the Software that hinder the functionality of the Software and that are reported during the first three months of the license shall be rectified at no cost to the licensee.
- 4.4 Any additions and changes to the Software shall be implemented by Archie by agreement at the fee applicable at the time.
- 4.5 If the Software is used in combination with incorrect or faulty hardware, or in combination with software not appropriate for that purpose, the client shall not be able to make a claim under any warranty.
- 4.6 The client shall indemnify and hold harmless Archie from and against all actions for damages instituted against Archie by third parties with respect to damage caused by or with the Software supplied.
- 4.7 Any software or components thereof replaced by Archie in fulfillment of its warranty obligation must be decommissioned and removed from the system by the client.

## 5 COPYRIGHT INFRINGEMENT

- 5.1 Archie shall take measures against any party that in any way infringes its copyrights or the copyrights owned by third parties, its intellectual property and/or ideas, as expressed in the Software supplied by Archie and the accompanying documentation.
- 5.2 Should the Software and/or documentation supplied by Archie violate any patent rights, copyrights and/or property rights owned by third parties, and such right is recognized as such by the competent Netherlands court, the client will, at Archie's option, either receive replacement Software or be refunded the usage fee.

## 6 TERMINATION

- 6.1 The right to use the license may be terminated with immediate effect by either party by registered letter and without court intervention, without prejudice to any other rights the parties may have under these Terms of Use or otherwise, in the event that:
  - a. the other party breaches any provision as laid down in these terms and conditions, without prejudice to the right of the party giving notice to claim damages;
  - b. either party files a petition in bankruptcy, is declared insolvent, is liquidated, or is granted a moratorium and/or any of its assets are attached in execution.
- 6.2 Within fourteen days of termination of the right to use the license, the client shall return or destroy the Software and all copies thereof, whether received from Archie or made by the client, as well as all documentation relating to the Software, in accordance with the instructions given by Archie, and the client shall give Archie written confirmation of such return or destruction, unless the client has received prior written consent from Archie to keep an archive copy of the Software.

## 7 USAGE FEE

- 7.1 The usage fee shall be payable within the number of days specified in the order or agreement.
- 7.2 An additional usage fee shall be payable if the client wishes to use the Software in such a manner that the maximum number of users as set out in the original order or agreement is exceeded, wishes to use the software at businesses not listed in the order or agreement, or wishes to increase the number of modules or other software used.

## 8 FINAL PROVISION

- 8.1 In the event that the client fails to strictly perform any of his obligations arising from an order or agreement with Archie, Archie shall be entitled to suspend the performance of all of its obligations towards the client. In that case, any amounts payable to Archie by the client shall become due and payable forthwith.
- 8.2 The Court of the District of Haarlem (the Netherlands), shall have exclusive jurisdiction over any disputes between the parties relating to the present Terms of Use and agreements.
- 8.3 These Terms of Use are governed by the laws of the Netherlands.