

**General Terms and Conditions for Sale** | Version: 02/01/2014

**Section 1. Interpretation**

1. The definitions and rules of interpretation in this section apply in these conditions.

**Purchaser:** the person, firm or company who purchases the Goods from STRAX.

**Contract:** any contract between STRAX and the Purchaser for the sale and purchase of the Goods, incorporating these conditions.

**Force Majeure Event:** an event which is beyond the reasonable control of a party, including, without limitation, acts of God, governmental actions, war, 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), default by supplier or contractor, or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials.

**Goods:** any goods agreed in the Contract to be supplied to the Purchaser by STRAX (including any part or parts of them).

**Order Confirmation:** the order confirmation issued by STRAX to the Purchaser in respect of the Goods.

**STRAX:** Strax Asia Limited, and/or any of its affiliates or group companies.

2. A reference to a law is a reference to it as it 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.
3. Words in the singular include the plural and vice versa.
4. A reference to one gender includes a reference to the other gender.
5. Section headings do not affect the interpretation of these conditions.

**Section 2. Applicability**

1. Subject to any variation under Section 2.2, the Contract shall be subject to these conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Purchaser purports to apply under any purchase order, confirmation of order, specification or other document or correspondence). For the avoidance of doubt, no terms or conditions endorsed on, delivered with or contained in the Purchaser's purchase order, specification or other document or correspondence shall form part of the Contract even if such document is being referred to in the Contract.
2. These conditions apply to all STRAX's sales and any variation to these conditions and any representations about the Goods shall have no effect unless expressly agreed in writing and signed by STRAX. The Purchaser acknowledges that it has not relied on any representation made or given by or on behalf of STRAX which is not set out in the Contract.
3. No order placed by the Purchaser shall be deemed to be accepted by STRAX until STRAX has issued to the Purchaser the Order Confirmation.
4. The Purchaser shall ensure that the terms of its order and any applicable specifications are stated in its purchase order and are complete and accurate.
5. No Contract shall come into existence until STRAX has issued to the Purchaser the Order Confirmation.

**Section 3. Data Protection**

1. The data collected by STRAX in the context of implementing the Contract shall be used **exclusively** for the purposes of performance of the Contract and customer care.
2. The data will **not** be disclosed to third parties.

#### Section 4. Storage and access to the text of the Contract

1. The text of the Contract is stored in the STRAX systems.
2. The Purchaser can view these conditions at any time at the website of STRAX ([www.strax.com](http://www.strax.com)).

#### Section 5. Prices/minimum order value

1. Unless otherwise agreed or specified by STRAX in writing, the price for the Goods shall be in US dollars and set out in the Order Confirmation.
2. The price for the Goods shall be exclusive of any tax and all costs or charge in relation to packaging, loading, unloading, dispatch, carriage and insurance, all of which amounts the Purchaser shall pay in addition when it is due to pay for the Goods.
3. The minimum order value is: USD10,000.

#### Section 6. Payment

1. Subject to section 6.4, unless otherwise agreed by STRAX in writing or specified in the Order Confirmation, payment of the price for the Goods is due immediately.
2. Time for payment shall be of the essence.
3. No payment shall be deemed to have been received until STRAX has received cleared funds.
4. All payments payable to STRAX under the Contract shall become due immediately on its termination despite any other provision or agreement between the parties.
5. The Purchaser shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Purchaser has a valid court order requiring an amount equal to such deduction to be paid by STRAX to the Purchaser.
6. If the Purchaser fails to pay STRAX any sum due pursuant to the Contract, the Purchaser shall be liable to pay interest to STRAX on such sum from the due date for payment at the annual rate of 2% above the best lending rate from time to time of HSBC Hong Kong, accruing on a daily basis until payment is made, whether before or after any judgment.
7. In order to assess the creditworthiness STRAX is permitted to undertake a creditworthiness check via Coface or by other means.

#### Section 7. Delivery / delivery dates / availability of supplies

1. STRAX shall supply the Goods in accordance with the Order Confirmation.
2. STRAX shall be entitled to deliver the Goods by separate instalments as STRAX, in its sole discretion, considers appropriate. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract. Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Purchaser to repudiate or cancel any other Contract or instalment.
3. Unless the Order Confirmation provides otherwise, delivery shall be Incoterms FOB or FCA, Hong Kong, as determined by STRAX.
4. If a delivery deadline ("**Delivery Deadline**") is agreed with the Purchaser, the Delivery Deadline is intended to be an estimate time for delivery and shall not be made of the essence by notice. Notwithstanding the aforesaid provision, STRAX will undertake its best efforts to comply with the Delivery Deadline.
5. If a Delivery Deadline is not specifically agreed, delivery period (dispatch time) is within 8 working days after receipt of payment (the "**Expected Delivery Deadline**"). The Expected Delivery Deadline is intended to be an estimate time of delivery and shall not be made of the essence by notice. The Purchaser may request in writing 3 working days after the Delivery Deadline (or, as the case may be, the Expected Delivery Deadline) STRAX to deliver within an appropriate period of time [as may further be agreed by STRAX]. On receipt of such request as agreed by STRAX, STRAX shall be in default if STRAX fails to deliver within such further period unless the delay is not caused by STRAX (which may include, but not limited to, the Force Majeure Event).
6. Any delay in delivery by STRAX shall not entitle the Purchaser to terminate or rescind the Contract unless such delay exceeds 180 days.



7. Unless the Order Confirmation provides otherwise, if STRAX is unable to deliver the Goods on time because the Purchaser has not provided appropriate instructions, documents, licences or authorisations:

- (a) risk in the Goods shall pass to the Purchaser (including for loss or damage caused by STRAX's negligence);
- (b) the Goods shall be deemed to have been delivered; and
- (c) STRAX may at its discretion store the Goods until delivery, whereupon the Purchaser shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

8. The Purchaser shall not be entitled to object to or reject the Goods or any of them by reason of any surplus or shortfall and shall pay for such goods at the pro rata Contract rate.

9. STRAX shall be entitled to rescind the Contract if, despite STRAX has issued the Order Confirmation, STRAX, in its sole discretion, considers that it is not able to supply the Goods in accordance with the Order Confirmation, provided that STRAX has informed the Purchaser of the unavailability of the Goods within 3 days prior to the Delivery Deadline (or, as the case may be, the Expected Delivery Deadline). If STRAX exercises the right of rescission, STRAX shall return any payment already received from the Purchaser to the Purchaser without delay.

#### **Section 8. Warranty for defects**

1. The parties define a fault that reduces the technical functioning when used properly to an extent that is not simply insignificant as a defect. Optical defects, damage etc. are not considered to be defects.
2. Subject to Sections 8.3 and 9.1, STRAX shall not be liable for a breach of warranty (whether express or implied) unless:
  - (a) the Purchaser gives written notice of the defect to STRAX within 3 days of the Delivery Deadline (or as the case may be, the Expected Delivery Deadline) or the actual date of delivery (whichever is the latest) and returns (at the Purchaser's own expense) to STRAX a sample of the Goods which the Purchaser claims to be defective; and
  - (b) STRAX is given a reasonable opportunity to examine such sample Goods after receiving the notice referred to in (a) above and confirmed after such examination that the Goods contains defects as defined in Section 8.1 above.
3. In any event, STRAX shall not be liable for a breach of warranty (whether express or implied) if:
  - (a) the Purchaser makes any further use of such Goods after giving notice of the defect; or
  - (b) the defect arises because the Purchaser failed to follow STRAX's oral or written instructions as to the storage, application, commissioning, use or maintenance of the Goods or (if there are none) good trade practice; or
  - (c) the Purchaser alters or repairs such Goods without the written consent of STRAX.
4. Subject to Sections 8.2 and 8.3, STRAX shall at its option repair or replace defective Goods (or the defective part only) or refund the price of such Goods at the pro rata Contract rate provided that, if STRAX so requests, the Purchaser shall, at the STRAX's expense, return the Goods or the part of such Goods which is defective to STRAX.
5. If STRAX complies with Section 8.4, it shall have no further liability for a breach of warranty (whether express or implied).

#### Section 9. Limitation of liability

1. All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
2. Nothing in these conditions excludes or limits the liability of STRAX:
  - (a) for death or personal injury caused by STRAX's negligence; or
  - (b) for any matter which it would be illegal for STRAX to exclude or attempt to exclude its liability; or
  - (c) for fraud or fraudulent misrepresentation.
3. Subject to Sections 9.1 and 9.2, STRAX's total liability (including, without limitation, loss, damages, costs and expenses) in contract, tort (including negligence or 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 Contract price.
4. Subject to Sections 9.1 and 9.2, STRAX shall not be liable to the Purchaser for:
  - (a) any failure or delay in STRAX complying with any specific obligation imposed on it under the Contract if the failure or delay arises from a Force Majeure Event;
  - (b) to the extent permitted by law, any breach of any warranties, conditions or other terms implied by statutes or common law;
  - (c) loss of profits, loss of business, or depletion of goodwill, in each case whether direct, indirect or consequential or special, liability or cost of any kind, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract, or in connection with any express or implied term of the Contract, or from any cancellation of the Contract, or from any negligence, misrepresentation or other act or omission on the part of STRAX, its servants, agents or contractors;
  - (d) to the extent permitted by law, any loss, liability, cost or injury caused to the purchaser's officers, or agents, and the Purchaser shall indemnify STRAX against any claims or demands by any of such persons.

#### Section 10. Risk / Title

1. 1. Unless the Order Confirmation provides otherwise, the risk of the Goods shall be passed at FOB or FCA, Hong Kong (as the case may be).
2. 2. Unless the Order Confirmation provides otherwise, ownership of the Goods shall not pass to the Purchaser until STRAX has received in full (in cash or cleared funds) all sums due to it in respect of:
  - (a) the Goods; and
  - (b) all other sums which are or which become due to STRAX from the Purchaser on any account.
3. STRAX shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from STRAX.
4. The Purchaser grants STRAX, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are stored in order to inspect them or, where the ownership of the Goods has not been passed to the Purchaser pursuant to Section 10.2, to recover them if STRAX, in its sole discretion, considers appropriate.
5. On termination of the Contract, howsoever caused, STRAX's rights contained in this section shall remain in effect.

#### Section 11. Limited period of limitation

To the extent not prohibited by applicable law and subject to Section 11.3, Sections 11.1 to 11.2 shall apply:

1. Where the Good is a used product the limitation period for claims for damages due to defects – regardless of legal grounds – shall be six months from the date of delivery, for all other claims and rights due to defects it shall be one year from the date of delivery.
2. The limitation periods for claims for damages according to Section 11.1 shall also apply to all other claims for damages against STRAX, regardless of legal grounds. They shall also apply where the claims are not related to a defect.
3. The above-mentioned limitation periods shall apply subject to the following:
  - (a) The limitation periods shall generally not apply in cases of intent or malicious concealment of a defect, or where STRAX has undertaken a guarantee with regard to the quality of the Goods in writing.
  - (b) Moreover, the limitation periods for claims for damages shall not apply to grossly negligent breaches of duty, to cases of culpable breach of essential contractual duties not constituted by delivery of a defective good, to cases of culpable injury to life, body or health.



## **Section 12. General**

1. 1. If any provision of these conditions shall be held to be illegal, void, invalid or unenforceable under the laws of any jurisdiction, the legality, validity and enforceability of the remainder of these conditions in that jurisdiction shall not be affected, and the legality, validity and enforceability of the whole of these conditions shall not be affected in any other jurisdiction.
2. (a) STRAX may assign the Contract or any part of it to any person, firm or company.  
(b) The Purchaser shall not be entitled to assign the Contract or any part of it without the prior written consent of STRAX.
3. STRAX reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Purchaser (without liability to the Purchaser) if it is prevented from or delayed in the carrying on of its business due to a Force Majeure Event, or if such delivery is delayed due to a Force Majeure Event, provided that, if the date of delivery is deferred for a continuous period in excess of 180 days, the Purchaser shall be entitled to give notice in writing to STRAX to terminate the Contract.
4. Each right or remedy of STRAX under the Contract is without prejudice to any other right or remedy of STRAX whether under the Contract or not.
5. Failure or delay by STRAX 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.
6. Any waiver by STRAX of any breach of, or any default under, any provision of the Contract by the Purchaser shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
7. A person who is not a party to the Contract shall have no rights to rely upon or enforce any term of the Contract.

## **Section 13. Governing Law and Dispute Resolution**

These conditions shall be governed and construed in accordance with Hong Kong law. All disputes, controversy or claim arising from these conditions should be settled through friendly negotiations. Should no settlement be reached through negotiation, the case shall be submitted to the Hong Kong International Arbitration Centre for settlement by arbitration in accordance with UNCITRAL arbitration rules then in effect by one (1) arbitrator. The arbitration shall take place in Hong Kong. The award of the arbitration shall be final and binding upon STRAX and the Purchaser.

## **Section 14. Information on trademarks, copyrights and other property rights**

All brands, designations and logos used are registered trademarks of their proprietors, even when not explicitly designated as such. Original accessories are especially designated as such.

**Subject to printing, setting and typological errors and technical amendments.**

**We would again like to draw your attention to the fact that the goods delivered may vary slightly from the images shown, depending on mobile phone manufacturer and model.**