



TERMS AND CONDITIONS

These Terms and Conditions govern the sale, delivery, installation and use of Arcoflex components.

Each order submitted to Arcoflex incorporates these Terms and Conditions and forms an agreement (“**contract**”) between the person named as the buyer on the order and Arcoflex Australia Pty Ltd (ABN 22 623 767 500) (“**Arcoflex**”). The contract becomes binding in accordance with clause 6.

1. Package Contents and Purpose

- 1.1 Each ordered installation (with all components, physical and electronic, being a “**Package**”) comes with one Arcoflex Gateway, being a control box ready to be connected to a 240V GPO outlet. Each Gateway contains a microcomputer running Windows 10 IoT Core and is designed to receive data from a range of sensors and transmit that data via proprietary protocols (“**Specified Information**”) to a series of Cloud services operated by Arcoflex. The buyer and any other persons designated in the buyer’s order (collectively “**Specified Recipients**”) may access the Specified Information from the Cloud services.
- 1.2 The Package includes a 16GB SD Card containing the application code necessary for this to take place.
- 1.3 Internet telemetry takes place using a 3G/4G modem and a SIM card, which are both supplied for this purpose. Where signal strength is low, an external antenna will be required for optimum performance and Arcoflex will supply this (including required mounts and wiring) at an additional charge. The buyer is responsible for the costs of installation in accordance with clause 3. Where an antenna is supplied by Arcoflex, the term “**Package**” as used in this contract includes the antenna and mounting accessories supplied by Arcoflex.
- 1.4 One or more sensors are supplied ready to install as specified in the buyer’s order. These sensors will collect the data intended to be transmitted to the Cloud services.

2. Arcoflex Licence

- 2.1 Use of the Package components requires a licence from Arcoflex, the licensor of all intellectual property rights subsisting in the Package (“**IP**”) from Arcoflex International Pty Ltd. Subject to the payment of the Package price, Arcoflex grants the buyer a perpetual, non-exclusive right to use the Package components solely in accordance with these Terms and Conditions and any other documentation provided by Arcoflex (including online terms of use) which governs the use of the Package components and the Cloud services.
- 2.2 The buyer acknowledges the rights of Arcoflex and Arcoflex International Pty Ltd to the IP.
- 2.3 Except as permitted by law or expressly authorised by Arcoflex, the buyer will not itself, nor permit any other person to: copy, print, alter, or translate any software provided with or in the Package components;
 - a) decompile, disassemble, or reverse engineer any Package component;
 - b) create any derivative work based on any Package component; or
 - c) remove, inspect or copy the contents of the SIM card or SD card supplied.
- 2.4 Use of the Arcoflex Cloud services also requires a licence to be granted from Arcoflex (as licensor of all rights in and to the Cloud services). The buyer will pay the licence fee annually in advance, commencing with Arcoflex’s receipt of the first year’s fee, or as designated on the buyer’s order.
- 2.5 The buyer’s obligations in clause 2.3 continue despite termination of this contract.

3. Delivery and Installation

- 3.1 The buyer is responsible for paying the cost of installation of the Package, including any consumables required to connect sensors and site antennae. Each site is different but Arcoflex’s accredited installers (each an “**Accredited Installer**”) can advise and quote on installation.
- 3.2 Arcoflex recommends that only Accredited Installers be used and can arrange a suitable installer for the buyer in most locations. However, in locations where there is no Accredited Installer or if the buyer so chooses, the buyer can elect to employ their own installer.
- 3.3 Arcoflex will deliver the Package to the installer or to the buyer’s nominated address, as stated on the order (provided it is within a reasonable distance from Arcoflex’s warehouse facility), within 10 business days after the buyer pays the Package price and at least the first year’s licence fee.

4. Arcoflex Warranty

Arcoflex warrants that:

- 4.1 The package will be free from manufacturing defects for a period of 12 months from delivery (“**Warranty Period**”), and on delivery, the Package is ready to be installed at the buyer’s premises.
- 4.2 If engaged by the buyer, an Accredited Installer will correctly install the Package according to Arcoflex’s instructions.
- 4.3 If an Accredited Installer fails to install the Package correctly, Arcoflex will arrange, at its cost and as soon as it can after notification from the buyer, arrange the correct installation of the Package.
- 4.4 If the Package is not installed by an Accredited Installer and that installer fails to install the Package correctly, on the buyer’s request Arcoflex will arrange for the correct installation of the Package as soon as it can be arranged and at the buyer’s expense.
- 4.5 If the Package is installed correctly, the Arcoflex Cloud services will receive the Specified Information if the Package components are turned on and functioning correctly, subject to clause 5 and subject to appropriate calibrations being carried out as specified on the Order.

- 4.6 If the Package is damaged due to any cause outside Arcoflex's control, or malfunctions after installation other than by an Accredited Installer, Arcoflex will, at the buyer's expense and as soon as it can arrange after being notified by the buyer, repair the damage or replace the damaged parts or correct the installation or malfunction (subject to Arcoflex being able to replicate the malfunction). Where damage to the Package is due to any cause within the control of Arcoflex or an Accredited Installer and occurs within the Warranty Period, Arcoflex will correct the damage by repair or replacement as soon as it can arrange after being notified by the buyer.
- 4.7 If the Package malfunctions within the Warranty Period (other than due to operator error) after correct installation and without damage to it, Arcoflex will correct the malfunction by repair or replacement as soon as it can arrange after being notified by the buyer (subject to Arcoflex being able to replicate the malfunction).
- 4.8 Arcoflex has the necessary rights to grant the licences in or referred to in this contract.

5. Exceptions to Arcoflex Warranty

Arcoflex does not warrant that the Arcoflex Cloud services will receive the Specified Information ("Non-Receipt"):

- a) during any power outage or lack of internet connection affecting the operation of the Package;
- b) during any service disruption to the Microsoft Azure platform or any other third party service which is used to provide the Cloud services;
- c) if the Non-Receipt is caused by damage to the Package after installation whatever the cause of the damage;
- d) if the Non-Receipt is caused by installation of the Package other than by an Accredited Installer;
- e) during any period in which any instalment of licence fee remains unpaid after a grace period of 5 business days after the due date; or
- f) if the Non-Receipt is due to low signal strength and an appropriate antenna has not been installed to provide adequate signal bandwidth.

6. Contract Commencement

- a) This contract commences when Arcoflex receives the amount referred to in clause 3.3 unless Arcoflex agrees in writing for the contract to commence on payment of a lesser sum.
- b) Title to goods comprised in the Package (save as referred to in clause 6.3) passes to the buyer on delivery.
- c) Arcoflex retains title to the Micro SD card and the SIM card.

7. Contract Termination

- 7.1 The buyer may terminate this contract on the expiry of 6 months written notice given by the buyer to Arcoflex, in which case Arcoflex may remotely disable the Micro SD card and SIM card. A refund of unused pre-paid licence fees may be made at the discretion of Arcoflex.
- 7.2 Arcoflex may terminate this contract:
- a) if the buyer breaches clause 2.4 or clause 2.5 and such breach continues for 5 business days after notice by Arcoflex to the buyer to remedy the same, or
 - b) if, after the commencement of this contract and before delivery of the package, Arcoflex notifies the buyer it is not able to deliver the Package or provide the monitoring service and returns to the buyer moneys paid by the buyer.

8. General Conditions

- 8.1 Where more than one buyer has entered into this contract, the buyers are jointly and severally liable for all payments and liabilities.
- 8.2 None of Arcoflex's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by Arcoflex in writing nor is Arcoflex bound by any such unauthorised statements.
- 8.3 The buyer waives any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any representation made to the buyer which is not expressed by Arcoflex in writing by any agent or representative of Arcoflex .
- 8.4 All amounts expressed to be payable under this contract are inclusive of GST.
- 8.5 Arcoflex shall not incur any liability to the buyer if it exercises its right to terminate this contract under clause 7.2(b).
- 8.6 Except as expressly provided in this contract and to the extent permitted by law:
- a) Arcoflex makes no warranty and gives no guarantee of any kind in respect of any Package component; and
 - b) Arcoflex excludes all liability to the buyer arising out of or in connection with any failure of any Package component or operation of the Package, including any implied warranty or guarantee of merchantability or fitness for purpose.
- 8.7 Arcoflex shall not incur any liability to the buyer in respect of loss incurred by the buyer because of the buyer failing to react appropriately to any Specified Information or any warning set by the buyer or any warning set by the buyer failing for any reason to be activated by data included in Specified Information or any deficiency in Specified Information unless the deficiency is specifically warranted in the order not to occur.
- 8.8 The buyer's exclusive remedy for breach of warranties given under clauses 4.3 and 4.7 is limited respectively, at Arcoflex discretion, to correct installation and repair or replacement as stated in those clauses.
- 8.9 Subject to clause 8.6(b), in the event of any breach of this contract by Arcoflex other than referred to in clause 8.7 the remedies of the buyer are limited to damages equal to the Price of the Package and licence fees paid to the date of the breach.
- 8.10 Arcoflex is under no liability whatever to the buyer for any indirect or consequential loss or expense (including loss of profit) suffered by the buyer arising out of a breach by Arcoflex of these terms and conditions.
- 8.11 The buyer acknowledges that any invoices or other documents required to be served on it may be served by being e-mailed to the buyer's nominated e-mail address, and such documents will be deemed to have been received on sending.
- 8.12 If any provision of these terms and conditions is invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions are not affected. prejudiced or impaired.
- 8.13 This contract is governed by the laws of Victoria. Each party submits to the exclusive jurisdiction of the courts there and the courts of appeal from them.
- 8.14 This contract may only be varied or replaced by a document executed by the parties.

9. Australian Consumer Law (ACL)

Nothing in these terms and conditions is intended to have the effect of contracting out of any applicable provisions of the Australian Consumer Law (Schedule 2 to *Competition and Consumer Act 2010* (Cwlth), except to the extent permitted by that Act.



Arcoflex International Pty Ltd

ABN 56 623 760 341

Level 2, 21 Chandler Road, Boronia Vic 3155

+61 9762 3155

sales@arcoflex.com.au

www.arcoflex.com.au



I acknowledge that I have read & agree to the Arcoflex Terms & Conditions and wish to accept this Sales Order.

Company/Account Name

Acknowledge by (Name & Title)

Signature

Date