

# Terms and Conditions

**DATED - 13<sup>th</sup> May - GTECHNIQ**

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The customer's attention is drawn in particular to the provisions of clause 8.

## 1. Interpretation

### 1.1 Definitions:

**Advertising Material** such advertising material as Gtechniq shall make available to the Dealership (e.g. point of sale printed brochure) free of charge from time to time.

**Business Day:** a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

**Business Hours:** the period from 9.00 am to 5.00 pm on any Business Day.

**Conditions:** the terms and conditions set out in this document as amended from time to time in accordance with clause 13.3 .

**Contract:** the contract between the Supplier and the Customer for the sale and purchase of the Goods in accordance with these Conditions.

**Customer:** the person or firm who purchases the Goods from the Supplier.  
Delivery Location: has the meaning given in clause 4.2 .

**Force Majeure Event:** an event, circumstance or cause beyond a party's reasonable control.

**Goods:** the goods (or any part of them) set out in the Order.

**Intellectual Property:** any and all intellectual property rights owned by the Supplier including patents, utility models, rights to inventions, copyright and neighbouring and related rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, any rights and all similar or equivalent rights or forms of protection that subsist or will subsist now or in the future in any part of the world.

**Order:** the Customer's order for the Goods, as submitted through on online portal.

**Supplier:** Gtechniq Ltd registered in England and Wales company number 05749351 and whose registered office is at The Mill Pury Hill Business Park, Alderton Road, Towcester, NN12 7LS. The main trading address is Unit 2, Langfurlong, Upper Heyford, Northamptonshire NN7 3FA. The Supplier's VAT number is 931643530

**Warranty Period:** has the meaning given in clause 5.1 .

### 1.2 Interpretation:

(a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

- (b) A reference to a party includes its personal representatives, successors and permitted assigns.
- (c) A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.
- (d) Any words following the terms **including, include, in particular, for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.
- (e) A reference to **writing** or **written** excludes fax but not email.

## 2. Basis of contract

- 2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.2 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order are complete and accurate.
- 2.3 After the Customer places an Order, the Supplier will send an e mail acknowledging that the order has been received but note that the Order shall only be deemed to be accepted when the Supplier issues a written acceptance of the Order, at which point the Contract shall come into existence.
- 2.4 The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.
- 2.5 Any samples, descriptive matter or advertising produced by the Supplier and any descriptions or illustrations contained in the Supplier's catalogues or brochures or on its website are produced for the sole purpose of giving an approximate idea of the Goods referred to in them. They shall not form part of the Contract nor have any contractual force.

## 3. Goods

- 3.1 The Goods are described on the Supplier's website but the images are for illustration purposes only.
- 3.2 Although the Supplier makes every effort to be as accurate as possible, all sizes, weights, capacities, dimensions and measure indicated on our website have a 2% tolerance.
- 3.3 The packaging of Goods may vary from that shown on images on the Supplier's website.
- 3.4 The Customer shall observe all directions and instructions given to it by the Supplier

in relation to promotional and advertising materials of the Supplier and shall cease use of the upon notification by the Supplier.

- 3.5 Sale of the Goods by the Customer must be directly sold by the Supplier via its own website or retail space and under no circumstances via a third party reseller of the Goods.
- 3.6 Any samples, descriptive matter or advertising produced by the Supplier and any descriptions or illustrations contained in the Supplier's catalogues or brochures or on its website are produced for the sole purpose of giving an approximate idea of the Goods referred to in them. They shall not form part of the Contract nor have any contractual force.

#### **4. Delivery**

- 4.1 The Supplier shall ensure that each delivery of the Goods is accompanied by a delivery note that shows the date of the Order, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered.
- 4.2 The Supplier shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (Delivery Location) at any time after the Supplier notifies the Customer that the Goods are ready.
- 4.3 Delivery is completed on the completion of unloading of the Goods at the Delivery Location.
- 4.4 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.5 If the Supplier fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.6 Other than delivery failure or delay caused by a Force Majeure Event or the Supplier's failure to comply with its obligations under the Contract in respect of the Goods if the Customer:
  - (a) fails to accept delivery of the Goods within three Business Days of the Supplier notifying the Customer that the Goods are ready, then delivery and acceptance of the Goods shall be deemed to have been completed at 9.00 am on the

fourteenth Business Day after the day on which the Supplier notified the Customer that the Goods were ready for delivery,

- (b)** believes that no actual or attempted delivery of the Goods by the Supplier's carrier has taken place within three Business Days of the Supplier notifying the Customer that the Goods are ready, then delivery and acceptance of the Goods shall be deemed to have been completed at 9.00 am on the fourteenth Business Day unless the Customer notifies the Supplier within such time period that it believes that delivery has not been attempted in which event the Supplier shall investigate the same but shall have no liability if:
- (i)** the Supplier can reasonably demonstrate that delivery was attempted or did in fact take place
  - (ii)** notification to the Supplier from the Customer does not occur within the time period set out in this clause

and, if the event that either clause 4.6(b)(i) or (ii) apply the Customer shall be deemed to have irrevocably accepted delivery of the Goods on the aforementioned fourteenth day and the Supplier shall have liability for non delivery or damage to the Goods.

**For the avoidance of doubt, the provisions of this clause 4.6 mean that once the Supplier has notified the Customer of delivery then, unless the Customer notifies the Supplier within 3 Business Days of the Supplier's notification that delivery has in fact not taken place, then risk and responsibility in the Goods will automatically pass to the Customer after 14 Business Days of such delivery date notification by the Supplier. This applies whether the Customer selected delivery to its premises or to another specified delivery point or to a carrier of its choice. This means that the Goods will be automatically at the Customer's risk and the Customer's responsibility after such 14 Business Day period including whether the Customer or its selected carrier/other delivery recipient is in fact in receipt of the Goods.**

- 4.7** If fifteen Business Days after the day on which the Supplier notified the Customer that the Goods were ready for delivery the Customer has not taken actual delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.
- 4.8** If the Supplier delivers up to and including 5% more or less than the quantity of Goods ordered the Customer may not reject them, but on receipt of notice from the Customer that the wrong quantity of Goods was delivered, the Supplier shall make a pro rata adjustment to the invoice for the Goods.
- 4.9** The Supplier may deliver the Goods by instalments, which shall be invoiced and paid

for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other installment.

## 5. Quality

5.1 The Supplier warrants that on delivery, and for a period of 12 months from the date of delivery (**Warranty Period**), the Goods shall:

- (a) conform in all material respects with their description; and
- (b) be fit for any purpose held out by the Supplier.

5.2 Subject to clause 5.3, if:

- (a) the Customer gives notice in writing to the Supplier during the Warranty Period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 5.1;
- (b) the Supplier is given a reasonable opportunity of examining such Goods; and
- (c) the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's cost,

the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

5.3 The Supplier shall not be liable for the Goods's failure to comply with the warranty set out in clause 5.1 if:

- (a) the Customer makes any further use of such Goods after giving notice in accordance with clause 5.2;
- (b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
- (c) the Customer alters such Goods without the written consent of the Supplier;
- (d) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
- (e) the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

5.4 Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Goods's failure to comply with the warranty set out in clause 5.1.

5.5 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

5.6 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

## 6. Title and risk

- 6.1 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.
- 6.2 Title to the Goods shall not pass to the Customer until the Supplier receives payment in full (in cash or cleared funds) for the Goods and any other goods that the Supplier has supplied to the Customer.
- 6.3 Until title to the Goods has passed to the Customer, the Customer shall:
- (a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
  - (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
  - (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
  - (d) notify the Supplier immediately if it becomes subject to any of the events listed in clause 9.1(b) to clause 9.1(d) ; and
  - (e) give the Supplier such information as the Supplier may reasonably require from time to time relating to:
    - (i) the Goods; and
    - (ii) the ongoing financial position of the Customer.

## 7. Price and payment

- 7.1 The price of the Goods shall be the price set out in the Order, or, if no price is quoted, the price set out in the Supplier's published price list in force as at the date of delivery.
- 7.2 The Supplier may, by giving notice to the Customer at any time up to 3 Business Days before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
- (b) any factor beyond the Supplier's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
  - (c) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered; or
  - (d) any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions.
- 7.3 The price of the Goods:
- (b) excludes amounts in respect of value added tax (VAT), which the Customer

shall additionally be liable to pay to the Supplier at the prevailing rate, subject to the receipt of a valid VAT invoice; and

- (c) excludes the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer.

7.4 The Supplier may invoice the Customer for the Goods on or at any time after the completion of delivery.

7.5 The Customer shall pay each invoice submitted by the Supplier:

- (a) as specified on our invoice; and
- (b) in full and in cleared funds to a bank account nominated in writing by the Supplier, and

time for payment shall be of the essence of the Contract.

7.6 If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier's remedies under clause 9, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 7.6 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

7.7 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

## 8. Limitation of liability

8.1 References to liability in this clause 8 include every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

8.2 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:

- (a) death or personal injury caused by negligence;
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
- (d) defective products under the Consumer Protection Act 1987.

8.3 Subject to clause 8.2, the Supplier's total liability to the Customer shall not exceed the price of the Goods.

8.4 Subject to clause 8.2, the following types of loss are wholly excluded:

- (a) loss of profits;
- (b) loss of sales or business;



- (c) loss of agreements or contracts;
- (d) loss of anticipated savings;
- (e) loss of use or corruption of software, data or information;;
- (f) loss of or damage to goodwill; and
- (g) indirect or consequential loss.

8.5 This clause 8 shall survive termination of the Contract.

## 9. Termination

- 9.1 Without limiting its other rights or remedies, the Supplier may terminate this Contract with immediate effect by giving written notice to the Customer if:
- (a) the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 Business Days of that party being notified in writing to do so;
  - (b) the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;
  - (c) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
  - (d) the Customer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.
- 9.2 Without limiting its other rights or remedies, the Supplier may suspend provision of the Goods under the Contract or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in clause 9.1(b) to clause 9.1(d) , or the Supplier reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 9.3 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.
- 9.4 On termination of the Contract for any reason the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Goods supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt.

- 9.5 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.
- 9.6 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.

## **10. Force majeure**

Neither party shall be in breach of the Contract or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from a Force Majeure Event. The time for performance of such obligations shall be extended accordingly. If the period of delay or non-performance continues for 30 days, the party not affected may terminate the Contract by giving 7day's written notice to the affected party.

## **11 Advertising Materials**

11.1 The Customer shall:

- (a) observe all directions and instructions given to it by the Supplier for promotion and advertisement (or cessation of such promotion and advertisement of the Products; and
- (b) not make any written statement as to the quality or manufacture of the Products without the prior written approval of the Supplier.

## **12. Intellectual Property**

- 12.1 All of the Intellectual Property shall remain vested with the Supplier and any logo or symbol associated with the Supplier.
- 12.2 The Customer must not in any way use or display or make any statement or representation about any of the Supplier's Intellectual Property unless in accordance with these terms and conditions or the Supplier authorises the same in writing.
- 12.3 The Customer must not in any way threaten or take any action to contest the validity of the Supplier's Intellectual Property unless the Supplier authorises the Customer in writing to do so.
- 12.4 No right or licence is granted under these terms and conditions under any Intellectual Property except the right to resell the Goods in accordance with these terms and conditions.
- 12.5 The Supplier makes no representation or guarantee the selling the Goods will affect the rights of any third party.

## 13. General

### 13.1 Assignment and other dealings.

- (a) The Supplier may at any time assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.
- (b) The Customer may not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Supplier.

### 13.2 Entire agreement.

- (a) The Contract constitutes the entire agreement between the parties.
- (b) Each party acknowledges that in entering into the Contract it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

**13.3 Variation.** No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

### 13.4 Waiver.

- (a) Except as set out in clause 2.4, a waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
- (b) A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

**13.5 Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision of the Contract is deemed deleted under this clause 13.5 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

### 13.6 Notices.

- (a) Any notice given to a party under or in connection with the Contract shall be in writing and shall be:
  - (i) day delivery service at its registered office (if a company) or its principal place of business (in any other case); or

- (ii) sent by email to the following addresses (or an address substituted in writing by the party to be served):

**Supplier: Gtechniq Ltd, Unit 2, Langfurlong, Upper Heyford,  
Northamptonshire NN7 3FA.**

Customer: per the address supplied to the Supplier at the time of placing the order

- (b) Any notice shall be deemed to have been received:
  - (i) if delivered by hand, at the time the notice is left at the proper address;
  - (ii) if sent by pre-paid first-class post or other next working day delivery service, at midday on the second Business Day after posting; or
  - (iii) if sent by email, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume
- (c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

### **13.7 Third party rights.**

- (a) Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- (b) The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

**13.8 Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.

**13.9 Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.