

1. Interpretation

- 1.1 In these Conditions:
"Acceptance" means the acceptance in Writing by the Buyer of a Quotation without amendment or qualification to the terms of the Quotation;
"Buyer" means a person who has submitted an Order or an Acceptance to the Company;
"Conditions" means the conditions set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and the Seller;
"Contract" means the contract between the Seller and Buyer for the purchase and sale of Goods and/or supply of Services;
"Goods" means the materials and goods (including any instalment of goods or part of them) which are the subject of an Order or an Acceptance;
"Order" means a request from the Buyer to the Seller as set out in the Order Form to sell Goods and/or supply Services;
"Order Form" means the Company's order form(s) for the sale of goods and/or supply of services;
"Quotation" means a quotation issued in writing by the Seller for the sale of Goods and/or supply of Services;
"Seller" or "the Company" means Technico Limited and wherever the context requires its servants, agents or contractors;
"Services" means the services which are the subject of an Order or an Acceptance;
"Writing" includes facsimile transmission and comparable means of communication;
"the 1893 Act" means the Sale of Goods Act 1893 as amended by the Sale of Goods and Supply of Services Act 1980;
"the 1980 Act" means the Sale of Goods and Supply of Services Act 1980.
- 1.2 Throughout these Conditions a singular number shall be construed to include the plural and vice versa and the use of any gender shall include all genders, whenever the context requires.
- 1.3 Words and expressions defined in the 1893 Act and the 1980 Act shall, when used in these Conditions, save where the contrary is expressly provided or the context otherwise requires, bear the same meanings as therein.
- 1.4 The headings in these Conditions are for convenience only and shall not affect their interpretation.

2. Basis of Sale and/or Supply

- 2.1 Save as otherwise provided herein the Seller shall sell or supply and the Buyer shall purchase Goods and/or Services in accordance with any Order which is accepted by the Seller, or any Quotation which is accepted by Buyer as the case may be, subject to these Conditions which shall govern the Contract to the exclusion of any other terms and conditions subject to which any such Order or Acceptance as the case may be is made or purported to be made by the Buyer. No variation of the Conditions shall be binding unless agreed in Writing between the Buyer and the Seller.
- 2.2 The Buyer's attention is drawn in particular to Conditions 2.4, 6.2 and 3, 8 and 10.1 and 2 which exclude or limit the Seller's liability.
- 2.3 The Seller's employees or agents or contractors are not authorised to make any representation or warranty or to give any advice or recommendation concerning Goods and/or Services unless such representation, warranty, advice or recommendation is confirmed by an authorised representative of the Seller in writing. In entering into the Contract the Buyer acknowledges that it does not rely on and that the Seller is not liable for and waives any claim for breach of or in respect of, any such representation, warranty, advice or recommendation which is not so confirmed.
- 2.4 Any typographical, clerical or other error or omission in any literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

3. Orders, Acceptances and Specifications

- 3.1 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any Order or Quotation (including any applicable specification) submitted by the Buyer and for giving the Seller any necessary information within a sufficient time to enable the Seller to perform the Contract in accordance with its terms and hereby indemnifies the Seller against all losses (including loss of profit), costs (including the costs of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of the terms of such Order or Quotation (including specifications) being inaccurate or inadequate.
- 3.2 No Contract shall be deemed to have come into existence.
- 3.2.1 in respect of an Order unless an Order Form duly filled out in relation to an Order and signed by a signatory for the Buyer is accepted by the Seller and duly signed on behalf of the Seller by an authorised signatory; or
- 3.2.2 in respect of an Acceptance unless a Quotation is accepted in Writing without qualification or amendment by a signatory for the Buyer and received by the Seller during normal business hours.
- Each Order from the Buyer (if accepted as aforesaid) and each Acceptance constitutes the basis of a separate Contract. Any person executing an Order Form or Acceptance as signatory for the Buyer shall be taken in good faith by the Seller to be the authorised signatory of the Buyer for such purpose whether such person shall be so authorised or not.
- 3.3 No Order which has been accepted by the Seller or Acceptance may be cancelled by the Buyer except with the agreement in Writing of the Seller and then on terms that the Buyer shall indemnify the Seller in full against all losses (including loss of profit), costs (including the costs of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of cancellation.
- 3.4 Quotations and the execution of an Order are at all times subject to Goods, labour and transport being available.
- 3.5 Subject to Condition 3.4 the quantity, quality and description of and any specification for Goods and/or Services shall be those set out in the Order or Quotation as the case may be.

The Seller reserves the right to make any changes in the quantity, quality and description of or specifications for Goods and/or Services which are required to comply with any applicable safety or other statutory requirements or which do not materially affect quality or performance of such Goods and/or Services.

4. Price of the Goods

- 4.1 The price of Goods and/or Services shall be that set out in the Order accepted by the Seller or the Quotation accepted by the Buyer as the case may be provided that if there shall be no such price their price shall be that listed in the Seller's published price list current at the date of acceptance by the Seller of the Order or the date of the Acceptance as the case may be.
- 4.2 The Seller reserves the right by giving notice to the Buyer at any time before delivery to increase the price of Goods and/or Services to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller such as without limitation, any foreign exchange fluctuation, currency regulation or alteration of duties, increase in the cost of labour, materials or other cost of manufacture, any change in delivery dates, quantities or specifications for such Goods and/or Services which is requested by the Buyer or any delay caused by any instructions of the Buyer or failure by the Buyer to give the Seller adequate information or instructions.
- 4.3 Save as otherwise provided in the Order or Quotation as the case may be or as otherwise agreed in writing between the Buyer and Seller, the Buyer shall be liable to pay the Seller's charges for transport, packaging and insurance in relation to Goods and/or Services.
- 4.4 The price of Goods and/or Services is exclusive of any applicable Value Added Tax or any other applicable taxes or duties for which the Buyer shall be additionally liable pay to the Seller.

5. Terms of Payment

- 5.1 Subject to any special terms agreed in Writing between the Buyer and the Seller, unless the Seller has required payment in advance for Goods, payment in respect of Goods shall be made immediately upon delivery of Goods unless Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of Goods in which event the Seller shall be entitled to invoice the Buyer for the price at any time after the Seller has notified the Buyer that Goods are ready for collection or (as the case may be) the Seller has tendered delivery of Goods. In the case of a supply of Services payment shall be due on the date of payment set out in the Order or Quotation as the case may be.
- 5.2 The Buyer shall pay the price of Goods and/or Services within 7 days of the date of the Seller's invoice in respect of them notwithstanding that delivery of Goods may not have taken place and the property in such Goods has not passed to the Buyer. The time of payment of the price shall be of the essence of the Contract. Receipts for payment shall be issued only on request.
- 5.3 If the Buyer fails to make any payment in respect of Goods and/or Services on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:
- 5.3.1 cancel the Contract and suspend any further deliveries or supplies to the Buyer; and/or
- 5.3.2 charge the Buyer interest (both before and after judgement) on the amount unpaid at a rate of 1.5% per month or part of a month until payment of all sums due is received by the Seller.
- The Buyer shall be responsible for all costs legal or otherwise incurred by the Seller in seeking payment of the sum due.
- 5.4 Notwithstanding any other provision in these Conditions to the contrary no claim for monies due or to become due to the Seller under the Order or Quotation as the case may be or any part thereof shall be subject to any set off or counter-claim or deduction under the Contract or any other contract or otherwise and the Buyer shall not be entitled to withhold payment of invoices or to make any deductions or deferrals from invoices on account of any claim against the Seller of any nature whatsoever.
- 5.5 Where a cheque, bill of exchange or other negotiable instrument is offered as payment for any Goods and/or Services the Seller shall not be deemed to have received payment until the cheque, bill of exchange or other negotiable instrument has been cleared and honoured.

6. Delivery/Supply

- 6.1 Delivery of Goods shall be made by the Buyer collecting the Goods at the Seller's premises at any time after the Seller has notified the Buyer that they are ready for collection or, if some other place for delivery is agreed by the Seller, by the Seller delivering the Goods to that place. Supply of Services shall be made at the place specified in the Order or Quotation as the case may be.
- 6.2 Any dates quoted or stated in the Order or Quotation as the case may be for delivery of Goods or supply of Services are approximate only and the Seller shall not be liable for any delay in delivery of Goods or supply of Services howsoever caused. Time for delivery or supply shall not be of the essence of the Contract unless previously agreed by the Seller in Writing. Goods may be delivered or Services supplied by the Seller in advance of the quoted or stated delivery or supply date upon giving reasonable notice to the Buyer.
- 6.3 If the Seller fails to deliver Goods or supply Services for any cause other than a cause beyond the Seller's reasonable control or the Buyer's fault and the Seller is accordingly liable to the Buyer, the Seller's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods to replace those not delivered over the price of such Goods or as the case may be of similar services to replace those not supplied over the price of such Services.
- 6.4 If the Buyer fails to take delivery of Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault), then, without prejudice to any other right or remedy available to the Seller, the Seller may:
- 6.4.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or

- 6.4.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) charge the Buyer for any shortfall below the price under the Contract.
- 6.5 Delivery of Goods and/or supply of Services shall be proof that such Goods and/or Services were ordered or that a Quotation in respect of them was accepted as the case may be.
- 7. Risk and Property**
- 7.1 Risk of damage to or loss of Goods shall pass to the Buyer:
- 7.1.1 in the case of Goods to be delivered to the Seller's premises, at the time when the Seller notifies the Buyer that the Goods are available for collection; or
- 7.1.2 in the case of Goods to be delivered otherwise than at the Seller's premises, at the time of delivery or if the Buyer wrongfully fails to take delivery of the Goods, at the time when the Seller has tendered delivery of the Goods and thereafter the Seller shall have no responsibility in respect of the Goods which shall be the responsibility of the Buyer.
- 7.2 Notwithstanding delivery and the passing of risk in Goods, and any other provision in these Conditions, the property in Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full (without set-off or deduction in accordance with Condition 5.4) of the price of such Goods and all other goods and services agreed to be sold or supplied by the Seller to the Buyer subject to these Conditions or otherwise for which payment is then due (including any government tax or levy due for payment, any interest on any debt, any amount due in respect of any extras which may have been added to any installations supplied by the Seller to the Buyer under any Contract).
- 7.3 Until such time as the property in Goods passes to the Buyer hereunder:
- 7.3.1 the Buyer shall hold such Goods as the Seller's trustee and in a fiduciary capacity for the Seller and shall ensure the same remain at all times separately identifiable as the property of the Seller, properly stored, protected and insured, and shall return them at the Buyer's expense to the Seller on request;
- 7.3.2 the Buyer shall be entitled to sell or use such Goods in the ordinary course of its business but shall account to the Seller for and hold on trust for the Seller the proceeds of sale or otherwise of the Goods (whether tangible or intangible including insurance proceeds in respect of damage, deterioration, loss or destruction of the Goods or otherwise) and/or any rights or remedies in respect of such sale or use or if such proceeds of sale or otherwise exceed the unpaid amounts referred to in Condition 7.2 an amount of those proceeds of sale or otherwise of the Goods up to such unpaid amounts;
- 7.3.3 the Buyer shall keep all proceeds referred to in Condition 7.3.2 separate from any monies or property of the Buyer and third parties, and in the case of tangible proceeds, properly stored, protected and insured, and in the case of monies in a separate account and if directed by the Seller shall exercise any rights or remedies referred to in Condition 7.3.2. in accordance with the Seller's directions and on request by the Seller the Buyer shall furnish the Seller with details of all persons to whom sales of such Goods have been made, any proceeds of sale received and/or rights and remedies in respect of such sales;
- 7.3.4 provided such Goods are still in existence and have not been resold the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and if the Buyer fails to do so forthwith to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods; and
- 7.3.5 if in the normal course of its trade the Buyer shall mix or otherwise combine such Goods with other goods, at the request of the Seller the Buyer shall certify to the Seller the proportionate value of the Goods comprised in the combined goods. In the event of the sale of such combination goods the Buyer shall account to the Seller in respect of the relevant proportion of the proceeds of sale and the terms of Conditions 7.3. shall apply thereto mutatis mutandis.
- 7.5 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any Goods which remain the property of the Seller but if the Buyer does so all monies owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.
- 7.6 Nothing in these Conditions shall prejudice any right of the Seller's right to payment of the price of Goods, damages, loss of profits or interest.
- 7.7 Nothing in this Condition shall confer any right upon the Buyer to return Goods and the Seller may maintain an action for the price of Goods notwithstanding that property in such Goods shall not have vested in the Buyer.
- 8. Warranties, Liabilities and Guarantees**
- 8.1 Nothing in the Conditions is intended to be interpreted so as to restrict or exclude in any manner whatsoever the rights which a Buyer who deals as consumer enjoys by virtue of Sections 12, 13, 14 or 15 of the 1893 Act or which a Buyer of Goods, being one who does not deal as consumer, enjoys in respect of a Contract which is not a contract for the international sale of goods by virtue of Section 12 of the 1893 Act. Where a Contract is one for the international sale of goods terms implied by statute are fully excluded. Where a contract is for the supply of Services terms implied by Section 39 of the 1980 Act are fully excluded. The exclusion or restriction provided herein of the rights conferred on the Buyer of Goods (being a Buyer other than one who deals as consumer) under Sections 13, 14 and 15 of the 1893 Act is subject to Section 55 of the 1893 Act. The exclusion or restriction provided herein of the rights conferred on a Buyer of Services dealing as a consumer under Section 39 of the 1980 Act is subject to Section 40 of the 1980 Act.
- 8.2 Except as provided herein, any condition, warranty, term, representation or statement whatsoever, whether expressed or implied and whether statutory or arising under common law shall be excluded, including in particular, but without prejudice to the generality of the foregoing any condition, warranty, term, representation and statement as to the quality of Goods or their fitness for any purpose or as to Services to be provided pursuant to an Order or Quotation as the case may be.
- 8.3 The Seller shall not be liable for any incidental, consequential, direct or indirect, damage, loss, special or punitive damages or liabilities of any kind or for loss of revenue, loss of business or other physical or financial loss or injury arising out of or in connection with the sale, supply, installation, servicing, use, performance, failure, interruption or break-down of or the remedying of any defect in, Goods and/or Services as appropriate whether suffered by the Buyer or any third party.
- 8.4 Rejection by the Buyer of any Goods which do not conform to the Order or Quotation as the case may be must be made by written notice given to the Seller within 14 days after the date of delivery of such Goods by the Seller. The Buyer's failure to state with particularity in connection with a rejection, any defects in the relevant Goods which are ascertainable by reasonable inspection shall preclude it from relying on the unstated defects to justify rejection or to establish a breach of the Order or Quotation. A failure to reject Goods in the manner specified in this paragraph shall subject to the other Conditions constitute an irrevocable acceptance by the Buyer of the Goods. In the event of an effective rejection of any Goods the Seller shall have a reasonable time after receipt of notice in Writing of rejection with which to cure the defects stated in such notice ("the notified defects") (whether by way of repairing or replacing the defective Goods). Defects in any delivery not stated with particularity in such notice shall not be a ground for cancellation of the remainder of the Contract or of the whole Contract arising out of the Order or Quotation as the case may be or of any other contract concluded by the Seller. The cost or charge of remedying defective Goods shall be borne by the Seller. The remedying by the Seller of the notified defects pursuant to this Condition shall be treated as if it were the remedying of a defect in the Goods pursuant to the guaranteeing provisions contained in Condition 8.5 below and the Seller's obligation and liabilities shall be limited in this Condition in the like manner and to the same extent as those contained in Condition 8.5 below.
- 8.5 The Seller guarantees Goods from the date of delivery for the period indicated in the Order or Quotation as the case may be ("the Guarantee Period"). This guarantee only covers parts and labour expended by the Seller in respect of defects arising in the course of normal and proper use of Goods ("Guaranteed Defect"). Following written notification to the Seller prior to or on the expiry of the Guarantee Period of the Guaranteed Defect occurring within the Guarantee Period in Goods supplied or installed the Seller shall remedy the Guaranteed Defect (by repairing or replacing the defective Goods) without cost or charge being made to the Buyer. The Guarantee shall not extend to any direct or indirect or consequential loss or damage or injury howsoever suffered by the Buyer or the Buyer's business or any third party resulting from any defect existing in Goods including in particular but without prejudice to the generality of the foregoing any defect existing or caused by virtue of a negligent act or omission on the part of the Seller. Cables not within Goods shall not be covered by this Guarantee once they have become operational.
- 9. Termination**
- 9.1 This Condition applies if:
- 9.1.1 the Buyer commits any breach of these Conditions;
- 9.1.2 any distress or execution is levied upon the Buyer, its property or assets or the Buyer makes or executes any assignment for the benefit of or makes or offers to make any arrangement or composition with its creditors or commits any act of bankruptcy or if any petition or receiving order in bankruptcy shall be presented or made against the Buyer or, if the Buyer shall be a limited company any resolution or petition to wind up the Buyer shall be passed or presented or if a receiver of the undertaking property or assets of the Buyer or any part thereof shall be appointed or if an examiner is appointed to the Buyer;
- 9.1.3 the Buyer ceases or threatens to cease to carry on business;
- 9.1.4 an event analogous to any of the foregoing in respect of the Buyer occurs in any jurisdiction;
- 9.1.5 the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.
- 9.2 If this Condition applies then without prejudice to any other right or remedy available to the Seller the Seller shall be entitled to terminate the Contract forthwith and/or to suspend any further deliveries under the Contract in either case without any liability to the Buyer and if Goods have been delivered and/or Services supplied but not paid for the price for such Goods and/or Services shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.
- 10. Miscellaneous**
- 10.1 The Seller may at its discretion cancel or suspend the Contract (or any remaining part thereof as appropriate) by notice in writing to the Buyer if the Seller is or reasonably expects to be prevented from or delayed in performing the Contract (or such remaining part thereof as appropriate) by force majeure including Acts of God, acts of enemies or of any government, lawful acts of any public authority, national, international or otherwise, fire, strike, lock-out, stoppages at work, trade disputes, pickets, blockades, embargoes or the threat or apprehension thereof, riot or civil commotion or the default of any agent or contractor of the Seller or suppliers of the Seller or to any other circumstance outside the Seller's control. In the event of such cancellation or suspension the Seller shall not be under any liability to the Buyer for any loss or damage direct or indirect of any nature resulting from the non-performance of or delay in performing the Contract (or such remaining part thereof as appropriate) by the Seller. In the event that the Seller suspends the Contract (or any remaining part thereof as appropriate) in the circumstances outlined above it may proceed to perform the Contract (or that remaining part) when it is no longer prevented from or delayed in doing so by force majeure provided that the Buyer shall not be entitled as a result of a suspension to a refund of any service charge or to cancel the Contract (or the relevant remaining part thereof).
- 10.2 No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 10.3 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.
- 10.4 The Seller shall, in the performance of any obligations under a Contract be entitled to engage agents, contractors or otherwise.
- 10.5 The Conditions shall be governed by and construed in accordance with the laws of the Republic of Ireland and the Irish courts shall have exclusive jurisdiction for the benefit of the Seller to decide any differences or disputes arising between the Seller and the Buyer.
- 10.6 Any notice or other communication authorised or required to be given in writing by any party hereunder or for the purposes hereof to the other party hereunder shall be sufficiently given if delivered by hand or sent by post to the address or by facsimile transmission to the facsimile number of the Seller or the Buyer as the case may be set forth in the Order or Quotation as the case may be or to such other addresses or facsimile numbers as shall be notified from time to time by one party to the other.