

## Terms and Conditions of Sale

### 1 Definitions

- 1.1 Effective Date: These Terms are applicable from 1<sup>st</sup> August 2008.
- 1.2 Order Confirmation: Written acceptance of the Customer's order for the goods and/or services described within.
- 1.3 Product Defect: Any aspect of the product, excluding batteries, which fails to perform its proper function due to a mechanical, electrical or electronic fault.
- 1.4 Product Delivery Date: All goods shipped are based on standard AnPost registered delivery (unless otherwise agreed) and Date of Delivery will be recorded on the Delivery Docket as such.
- 1.5 Resellers / Trade Accounts: All business customers which resell products on to others such as end-use customers.
- 1.6 Service Agreement: An agreement stating the contractual obligations between both parties for delivery of a range of services. This would typically contain term of contract, scope of requirements to be undertaken and may also contain performance and ongoing payment criteria.
- 1.7 Terms of Reference: A reference document scoping out the requirements for the desired solution.

### 2 General

- 2.1 The terms and conditions (the "**Terms**") in this document constitute the entire agreement between, Gerriko S-E-T Technology Solutions Ltd. ( "**Gerriko**"), with an address at Guinness Enterprise Centre, Taylor's Lane, Dublin 8 and all its customers (the "**Customer**") with regard to the provision and sale of any goods and services (the "**Transaction**"). Gerriko will not be bound by any express or implied term, representation, warranty, promise or the like that is not described herein.
- 2.2 All quotations are valid if issued in writing and will remain valid for 20 business days after the written quotation date, unless otherwise agreed to on the quotation or on a written commercial proposal which offers to provide a service or deliver a solution.
- 2.3 A Transaction is deemed to be subject to these Terms when Gerriko accepts the Customer's order by a written Order Confirmation, and unless otherwise agreed, in conjunction with:
  - 2.3.1 A Service Agreement for any ongoing services provided to the Customer; or
  - 2.3.2 A Terms of Reference for any solution that will be delivered to the Customer.
- 2.4 Gerriko's Order Confirmation is a binding agreement to these Terms. With regards to ordering products, Gerriko accepts that discrepancies could arise between what the Customer ordered and the Order Confirmation and where this discrepancy is unacceptable to the Customer. It is the responsibility of the Customer to review the Order Confirmation and resolve any discrepancies found within 5 business days. Failure to resolve any discrepancies within 5 business days could result in late delivery and/or charges due to any amendments – see section Order Cancellation/Changes.

### 3 Waiver

- 3.1 Unless otherwise agreed to in writing by Gerriko, these Terms will not be waived or amended and shall take precedence over any Customer terms and conditions. At no stage should Gerriko be expected to object to the Customer's terms and conditions in order for these Terms to take precedence. The Customer should not assume that these Terms have been waived due to any indulgence which Gerriko may grant to the Customer prior to the Transaction.

- 3.2 No waiver by Gerriko of any of these Terms shall be deemed to constitute a waiver of any other Terms or a waiver of the same or any other provision with regard to the agreed Transaction or any future Transactions.

#### **4 Changes to Terms**

- 4.1 Gerriko reserves the right to change these Terms at any time. Any such changes will apply from the Effective Date specified on the Terms. To maintain flexibility, the applicability of these changes will be subject to any negotiated conditions stated in any existing Service Agreement or Terms of Reference.
- 4.2 For any ongoing Transactions with Resellers/Trade Accounts, not subject to a Service Agreement or Terms of Reference, the Customer agrees to accept these changes from the Effective Date, unless the Customer provides a written request that the changes are deferred until after the next order, or until 20 business days after the Effective Date, whichever is sooner.

#### **5 Pricing**

- 5.1 All prices stated on the Gerriko website are merely recommended guide prices. All prices stated on an Order Quotation may be subject to change, with all prices confirmed on the Order Confirmation.
- 5.2 Due to large currency fluctuations, Reseller / Trade Account Customer price lists for all products are subject to change. Price lists will be updated every 3 months but should particular items be out of stock, pricing could change prior to the new price list. The Reseller / Trade Account Customer will be notified of any stock outs and will be notified of the price on the Order Confirmation. Gerriko cannot guarantee delivery charges for on going orders and these will be determined on each order.
- 5.3 Pricing for any delivery will be estimated on the Order Quotation and finalised on the Order Confirmation. The Customer may be charged any insurance necessary to indemnify it against any losses caused through delivery.

#### **6 Payment**

- 6.1 Amounts are due upon receipt of invoice and payable as specified in the Order Confirmation. Customer agrees to pay accordingly, based any one of the payment methods stated on the Order Confirmation. Payment methods not state may be accommodated but additional charges may arise.
- 6.2 Unless agreed to in writing, all Customers are required to settle the invoice prior to dispatch of products ordered or paid for in full at time of delivery. The Customer can not exercise any rights of set-off or counterclaim against invoices submitted.

#### **7 Payment Terms for Resellers / Trade Accounts**

- 7.1 Subject to trading history with Gerriko, credit terms can be arranged whereby Resellers / Trade Account Customers have 30 (thirty) days from date of invoice to complete payment. Gerriko requires Reseller / Trade Account invoices to be checked within 21 (twenty one) days from date of invoice to raise any queries or disputes, otherwise the invoice will be deemed accurate and due for payment. Disputed parts of the invoice will not be due for payment until 14 (fourteen) days after the date when the dispute is resolved. Undisputed parts of the invoice must be paid within the normal payment terms stated.

- 7.2 Unless otherwise agreed in writing, interest shall be paid on all overdue amounts at the rate of 1.5% per month or part thereof and compounded monthly.
- 7.3 Gerriko reserves the right to revoke or amend any credit terms extended to any Reseller / Trade Account. Should credit terms changes be required, Gerriko will notify the Reseller / Trade Account Customer prior to Order Confirmation and all changes will be specified in writing on the Order Quotation.
- 7.4 If any invoice is not paid for within 90 (ninety) days from date of invoice, all recovery / payment collection costs including agency and legal fees will be charged to the Customer, whether incurred in or out of court, on appeal, in arbitration, or in any insolvency proceeding. Gerriko reserves the right to pass any debt to third parties for collection.

## **8 Delivery / Shipments**

- 8.1 All delivery arrangements must be confirmed prior to Order Confirmation. In the absence of specific instructions by the Customer, Gerriko will select the delivery method. By default all orders will be shipped using registered mail through An Post or through a specified Courier service. Whilst Gerriko will use its best endeavours, Gerriko takes no responsibility for ensuring delivery by the estimated delivery date.
- 8.2 All deliveries will be made to the delivery address specified on the Order Confirmation. Whilst Gerriko will use its best endeavours to ensure accuracy of the Customers details, it is the responsibility of the Customer to check the Order Confirmation sheet for any errors and to respond within 5 business days. Additional delivery charges will be made for any redirection or re-delivery due to incorrect delivery address.
- 8.3 Should the delivery be returned to Gerriko due to the failure of the Carrier to deliver or due to the failure of the Customer to collect from the Carrier within their specific time period, additional charges will apply to re-deliver.
- 8.4 Should any products be out of stock, Gerriko will inform the Customer prior to Order Confirmation as some products are imported from South Africa and therefore due to customs and excise no estimated delivery times can be provided for those out of stock items. At the Customer's request Gerriko can notify the Customer when these products become available.

## **9 Ownership of products ordered and supplied**

- 9.1 Unless otherwise agreed to in writing for Resellers/Trade Accounts, all products ordered remain the property of Gerriko until paid for in full. Gerriko may seek to recover any products supplied at any time prior to ownership passing to the Customer, should the Customer be in breach of these Terms. Gerriko may seek to claim all recovery charges back from the customer.
- 9.2 Gerriko will normally pass risk of stock supplied on delivery and will expect the Customer to check and notify Gerriko within 5 business days if the stock supplied is incomplete, damaged or otherwise inadequate.

## **10 Return of Products**

- 10.1 The Customer can returned all products purchased directly from Gerriko, provided they are received by Gerriko within 30 (thirty) days of the Product Delivery Date and are undamaged together with the original packaging and proof of purchase. All products to be returned at the Customer's expense.

## 11 Events beyond normal control

- 11.1 Neither party shall be obliged to seek to perform their obligations under these Terms or liable for their failure to do so to the extent that they are precluded from doing so by either events beyond Gerriko's normal and reasonable control such as fire, flood, war, trade embargo, strike, unforeseen shortage of materials or specific components, transport delay or interruption or act of government or by act of omission of the other party ("Force Majeure Events") provided that the affected party notified the other party promptly in writing and takes all reasonable steps to resolve the Force Majeure Event promptly.
- 11.2 Should performance (other than in respect of payment of sums due) be impossible for a period in excess of 30 days then either party may write to the other party to terminate any agreement in respect of the affected Order(s) without incurring liability to the other party for this action.

## 12 Intellectual Property Rights

- 12.1 Any patent, copyright or other intellectual property rights owned by Gerriko or any of its suppliers shall remain those of Gerriko (or its suppliers) whether or not the product was paid for or not. Any information obtained by the Customer from Gerriko which is identified as confidential and/or proprietary or is confidential and/or proprietary in nature may not be disclosed to any third party without prior written approval by Gerriko.

## 13 Warranties

- 13.1 Unless otherwise agreed to in writing, Gerriko warrants that in the event of any Product Defect occurring within a period of one year from the Product Delivery Date to the Customer, which is a result of faulty material or can be attributed to faulty workmanship by Gerriko, then Gerriko, at its own discretion, will either repair, replace the faulty components or refund the cost of the product purchased, provided that:
- 13.1.1 The product was not misused, inadequately stored, neglected or used for other than its intended purpose, or if its operating instructions were not adhered to;
- 13.1.2 The product had been serviced by a person who was not authorised to do so by Gerriko
- 13.1.3 Gerriko is notified of a problem in writing, prior to the Customer dispatching any faulty products back to Gerriko and that any products returned to Gerriko is undertaken at the Customer's risk.
- 13.2 Gerriko does not warrant the reliability or condition of any batteries supplied.

## 14 Contractual Obligations for Resellers / Trade Accounts

- 14.1 Gerriko expects all Reseller / Trade Account Customers to fulfil all normal legal obligations to its end users. Unless otherwise agreed to in writing, Gerriko will provide only these Terms to your customers in line with normal legal obligations.
- 14.2 All Reseller / Trade Account Customers will indemnify Gerriko from all claims, demands, losses, damages, liabilities, costs and legal and/or professional expenses, provided such costs and expenses are reasonably and demonstrably incurred, which Gerriko may suffer as a result of the Reseller / Trade Account Customer not complying with:
- 14.2.1 any data protection, intellectual property, and/or confidentiality obligations;
- 14.2.2 making unauthorised alterations to any products supplied (whether purchased, leased or provided by way of sample or demonstration model)

- 14.2.3 non compliance of waste disposal obligations (including any obligations under the relevant national application of the Waste Electrical and Electronic Equipment (WEEE) Directive 2002/96/EC and 2003/108/EC and any updates of these regulations that may be current from time to time)

## **15 Indemnities**

- 15.1 The Customer shall indemnify Gerriko against all damages, penalties, costs, charges and expenses to which Gerriko may become liable as a result of work done in accordance with Customers stated requirements.

## **16 Limitation of Liability**

- 16.1 These Terms set out Gerriko's entire liability in respect of all products sold. Gerriko's liability under these terms shall be in lieu and to the exclusion of all other warranties, conditions, terms and liabilities expressed or implied statutory or otherwise in respect of the quality or the fitness for any particular purpose for the products.

- 16.2 Gerriko will not be liable for:

- 16.2.1 Any loss or injury whatsoever (including indirect or consequential loss including loss of profit) arising from the supply of all products, including any loss or injury (whether direct, indirect or consequential) attributed to any negligent act of Gerriko or Gerriko's employees, partners, suppliers or agents; or
- 16.2.2 Any representations or warranties as to the products given by any of Gerriko's employees, partners, suppliers or agents.

## **17 Applicable Law**

- 17.1 The validity, performance and construction of these Terms are governed by the laws of the Republic of Ireland.