

## Terms & Conditions

### For Hardware Sales

Valid from 01/01/2013

These are the terms and conditions on which TRIPLEACS PTY LTD ("we" or "us" or "our") is willing to trade with you. Any variation to these terms and conditions must be in writing and signed by an authorised officer of TRIPLEACS PTY LTD.

#### 1. Price & Description

The price and description of the product you may offer to purchase from us ("our product") is described in our price list or in a quote which we provide to you upon request. We may change the price list at any time without prior notice. Any description of our product including any specifications, illustrations, drawings, data, dimensions and weights is approximate and is given by way of identification only. The use of that description does not constitute a sale by description and does not form part of our contract with you unless we say so in writing. You are responsible for ensuring that the product ordered is suitable for its intended use by you and we are not liable to you for any product you order which is unsuitable for your intended use. We do not accept any responsibility for any error in pricing as shown on our website or other listing outlet, or published material. If we provide you with a quotation, it is valid only for the period of time specified in the quotation or 30 days, whichever is the lesser, and only in respect of the matters set out in the quotation. All items on our quotations are subject to availability and may not be available or available at the exact price at the time you choose to accept our quotation. In this case we will inform you of the change and, if possible, provide you with a new quotation with updated components of equal or better value. Our quotations are confidential. You must not disclose the information in our quotations to any other person without our prior consent.

#### 2. Payment

Other than in cases where directly negotiated or agreed arrangements are made, payment for hardware components is strictly required in advance by EFT and must be paid within 5 days of placing an order or accepting our quote (failing which, we will be entitled to cancel the order without notice to you). Payments by cheque will not be considered received by us until the cheque is cleared by our bank. If any payment by you is dishonoured, you must pay us an additional account processing fee of \$40.00. If we explicitly state so on the quote for hardware components, we may accept payment of a deposit of a stated percentage upfront upon which we will supply you with the goods and invoice you for the remainder after delivery. Our invoices show a clearly stated due date or are due 14 days after issue. We may charge a late fee if after the due date that the invoice is not settled. These terms of payment also apply to any work we perform or service we provided to you on request which is separate from your purchase of product.

#### 3. Government Charges

Our prices are shown exclusive of GST unless where explicitly stated otherwise. GST is payable in addition to the price of our product and must be paid by you at the same time as you pay for our product. We will give you a tax invoice.

#### 4. Delivery

Delivery takes place on the earlier of the time our product passes into your or your agent's exclusive physical

control, when you collect the product or arrange for their collection from us or when ownership of our product has passed to you.

Orders that are subject to collection must be collected by you or your agent within 5 days of placing the order.

Failing which, we will be entitled to cancel the order without notice to you.

Our prices are shown exclusive of delivery costs. Unless explicitly waived on a quote, delivery costs are payable in addition to the price of our product and must be paid by you at the same time as you pay for our product.

Unless we make other arrangements with you, our product is delivered direct to your business address described in your account. If you request that we deliver our product to another address, we may charge you an additional fee. Any date for delivery of our product indicated by us is an estimated date for delivery only. We are under no liability for any loss or damage, however it arises, and you may not treat the relevant purchase order or these terms and conditions as terminated, if the product is not delivered by that date.

We reserve the right to deliver any products you order from us by instalment and each instalment is sold to you under a separate contract between you and us. Failure by us to deliver any instalment will not entitle you to cancel the balance of your order. In the event you are in default of these terms and conditions in respect of any instalment, we may elect to treat your default as a breach in respect of each other instalment.

We may charge you storage, handling and re-delivery fees if you are unable to take delivery of our product at the time we deliver our product to you.

## **5. Risk**

At all times from the date of delivery, our product is at your risk of loss or damage and you are responsible for its safe custody. You must keep our product insured and promptly provide us with evidence of such insurance and its currency as and when requested by us from time to time.

## **6. Ownership**

You do not own any of our product in your possession until all of our product you have purchased from us at any time and all other amounts owing by you to us on any account have been paid for in full. Until you have given us full payment, you promise to store and deal with our product in a way that it is clearly identifiable as ours. You grant us an irrevocable licence to enter your premises on any business day to inspect our product in your possession and your books or records regarding our product. If you wish, you may promote and on-sell our product in the ordinary course of business even if ownership of our product has not passed to you. You will hold the proceeds of sale in trust and not by way of security, for and as agent for us in a separate account, you will pay the proceeds to us as soon as you receive them and we have the right to trace and claim such proceeds. You have no right to bind us to any liability to any third party by contract or otherwise. If you use our product in some manufacturing or construction process of your own or some third party, you will hold such part of the proceeds as relates to our product in trust for us. Such part shall be deemed to equal in dollar terms the amount payable or owing by you to us at the time of the receipt of such proceeds. You will also keep separate records and clearly identify in your books your use of our product in such manufacturing or construction process.

## **7. Assignment**

You must not assign any rights or benefits under these terms and conditions unless you have obtained our prior written consent. Any assignment by you without our consent shall entitle us to avoid any liability we may have to you under these terms and conditions.

## **8. Recovery**

If at any time you owe us money on any account in excess of our trading terms then in addition to any other rights we have you agree we may enter any premises owned, possessed or controlled by you where our product is stored and remove our product and re-sell all or any of them. We are not liable to you if we take such action. If we

request you will obtain a landlord's waiver in a form acceptable to us.

## 10. Claims

When you take delivery of our product, you must inspect it immediately. You must report to us in writing any damage or incorrect supply which must be received by us within 7 days of delivery otherwise we may refuse any claim you make. If our product is damaged when we deliver it to you we may accept its return and replace it with an equivalent product or credit you with the price paid, at our option.

To return any product to us, you contact [returns@2pisoftware.com](mailto:returns@2pisoftware.com) and receive a return confirmation from one of our consultants.

We will accept the return of product if the product is not in accordance with your order, your proof of purchase is returned, and it is returned to us in its original condition within 5 business days of the return confirmation being issued by us. You are responsible for the cost of returning the product to us.

If you wish to return to us product which we have correctly supplied to order you must let us know within 7 days of the date of delivery. If we agree to the return of such product we may charge you a handling or re-stocking fee of between \$50.00 per product or 10% of the price of product returned plus any delivery costs. If we accept the return of product which was specifically produced to your specifications or has been damaged or altered by you, we will not credit you with the price paid for it.

If you have a dispute with us, you must notify our credit department in writing of your dispute prior to the due date of your payment for our product. You may not set off against or deduct from the price of product you have ordered from us any money you claim we owe you.

You agree that you shall make no claim against us for any delay in delivery or any damaged product delivered to you as a direct or indirect result of events beyond our control.

## 11. Manufacturer's Warranty

Before any manufacturer's warranty claim, you are requested to make sure the product is:

- Not affected by being used incorrectly or in an abnormal way. Such a use may be noted in the warranty as rendering it void, or it may be a use that you wouldn't reasonably expect the product to perform.
- Not disposed of, lost or destroyed. In other words, there needs to be proof that the product has failed.
- Not reduced in value by delay on the customer's part. Customers should bring faults to our attention soon after they occur.

TripleACS is not a manufacturer or authorized service centre, therefore it is highly recommended that, unless you have a current support agreement with TripleACS, you contact the manufacturer's technical support directly for any troubleshooting or technical support advice before you return the product to us for a warranty claim. Some of these manufacturer provided support services are free and may provide you expert technical advice. If the product is deemed faulty, in many cases, a tech support case number is assigned.

This can expedite the warranty process when lodging a warranty claim with TripleACS or directly with the manufacturer.

Some manufacturers provide onsite or pickup and delivery services as is most common with warranty services for notebooks and LCD monitors. These direct manufacturer services, in general, allow for a quicker turnaround of warranty claims.

Due to the Privacy Act, TripleACS cannot apply for a warranty claim on the customer's behalf directly with the manufacturer. If the manufacturer directs you to return the product back to us then you should lodge a warranty request by sending an email to [support@2pisoftware.com](mailto:support@2pisoftware.com). However if you have signed up for a current support agreement with TripleACS, we will endeavor to assist you with this in any way we can.

Please note: The actual manufacturer's warranty process may vary for different manufacturers and/or suppliers, so we cannot provide an accurate timeframe of how long the process will take for a particular product in the first instance. Status updates are provided once further information is received from the manufacturers, their service

centre or agents.

TripleACS also reserves the right to apply any service fees for any warranty claims to cover all costs incurred including inbound & return freight, supplier/manufacture service fees etc if the returned product is found to be not covered by warranty, warranty has expired, or no fault is found or the item was physically damaged.

## **12. Overdue Accounts**

You must pay for the product by each Due Date. Any account which is not settled by the Due Date will attract a late payment fee equal to 1% of your unpaid account, charged monthly until your account is paid in full. You agree that this late payment fee is a genuine pre estimate of the loss we would suffer if you do not pay for the product by the Due Date. If the arrangements provided under this clause would otherwise constitute a credit contract as defined in the Consumer Credit Code the time for payment of any overdue account is limited to a total period not more than 62 days from the date of invoice. Nothing in this clause imposes an obligation on us to extend our payment term to you for any period at all and we will not dispatch any products nor accept any further orders you place with us if your account is outstanding beyond 60 days from the date of invoice. You agree that any discounts, rebates or other concessions are lost if payment is not made in time. If you are in breach of any of our terms and conditions you agree that you are also responsible for all of our expenses of any kind including our legal costs on a solicitor client basis and any commission or other expense incurred by any debt collection agency we retain to recover the monies you owe us. We may commence legal proceedings against you for the recovery of any account which is overdue by 60 days or more from the date of invoice. In this clause, "Due Date" means the date specified in clause 2 on or by which you must pay your account with us.

## **12. Replacement or Money Back**

To the full extent of the law all warranties or guarantees are excluded. Warranties do not apply if the product has received maltreatment, inattention or interference or the product has not been used in accordance with any performance ratings or care instructions. To the extent that the law does not allow us to exclude warranties (other than a warranty as to title) but allows us to limit our liability, our liability for any claim is limited to, in relation to goods, a refund of the purchase price actually paid, the replacement of the damaged product or the supply of equivalent product at our absolute discretion and, in the case of services, the supply of the services again or the payment of the cost of having the service supplied again. In no circumstances are we liable for special, indirect or consequential loss including any loss of profit or of contract, even if you advise us of any special circumstances or such loss was reasonably foreseeable.

## **13. Conflict of Interest**

These terms and conditions override your terms and conditions. To the extent of any discrepancy between these terms and conditions and any other (including your own) terms and conditions these terms and conditions prevail.

## **14. Orders**

All communications between you and us including all purchase orders must be in writing (which includes by e-mail). Verbal orders must be confirmed in writing within 24 hours and will be considered as accepted by us on delivery.

Unless we agree special arrangements, such as an authorisation code, we assume any order received from anyone in your employ has been placed with your authority and is binding on you.

No quote is binding on us unless we have prepared and accepted a written confirmation of order.

If you make a change to an order or your delivery details change which cause a delivery delay or you cancel an order less than 14 days prior to a scheduled delivery, you will pay to us a fee equal to 5% of the list price of any product affected. If you cancel an order or refuse to accept all or any of our product in an order other than in circumstances permitted by these terms and conditions, you will be liable for any resulting damage or loss

suffered by us. If the product has been or is in the process of being manufactured or produced specifically for you, you will pay to us as liquidated damages the full price of the products and any costs incurred by us (including, without limitation, any GST) less the current scrap value of the product as determined by us.

#### **15. Your Relationship with Us**

Nothing in these terms and conditions creates any relationship of employment, agency or partnership between you and us.

#### **16. Intellectual Property**

These terms and conditions do not give you any intellectual property rights in our product.

If we source, produce or manufacture any product samples or prototypes specifically for you, you do not acquire any intellectual property rights in such samples and prototypes.

Your details and information that you provide us about yourself may be retained by us on our database. You have no rights in that database. We may use such database in the conduct of our business, subject to privacy and other relevant laws.

We are not liable for any infringement or unauthorised use of any intellectual property rights arising from these terms and conditions. If any dispute or claim is made in respect of any infringement or unauthorised use of intellectual property rights we may terminate these terms and conditions by notice to you and without liability to you or any other person.

In these terms and conditions, intellectual property rights includes the full benefit of any rights in any copyright, trademark, registered design, patent, trade and business names, know-how, inventions, improvements, discoveries and confidential processes and includes without limitation artistic works, images, illustrations and photographs and any adaptation or concept relating to it.

#### **17. Governing Law**

These terms and conditions are governed by, and you agree to submit to, the laws applicable in the State of New South Wales, Australia and the Commonwealth Personal Property Securities Act 2009.(PPSA)

#### **18. Whole Agreement**

Subject to clause 2, these terms and conditions form the entire agreement on which we are willing to trade with you and all or any previous agreements or understandings we may have had with you are superseded by these terms and conditions. We may alter these terms and conditions at any time upon one (1) months written notice. All transactions after the date specified in such notice will be subject to the altered terms and conditions. If you continue to trade with us after the date such alterations become effective you will be deemed to have agreed to the altered terms and conditions.

#### **19. Fitness For Purpose**

To the maximum extent permitted by law, you agree that you do not rely on our skill or judgement in relation to the suitability of any goods for a particular purpose. Any advice, recommendation, information or assistance provided by us is provided without any liability whatsoever.

#### **20. Privacy**

(a) Our Privacy Policy, available on our website or upon request to us, forms part of these terms and conditions.

(b) In accordance with the Privacy Policy, you agree that we may use or disclose information to third parties for the purpose of providing the product, providing information about product; sending information on our services; performing our administrative and marketing operations; complying with legislative and regulatory requirements or as otherwise permitted or authorised by law; considering any other application you may make to us; managing our

rights and obligations in relation to external payment systems, e.g. credit card schemes and debit payment schemes; conducting market research or customer satisfaction research; developing, establishing and administering arrangements (including rewards programs) with other organisations in relation to the promotion, administration and use of our products; and developing and identifying products and services that may interest you.

## **21. Interpretation**

In these terms and conditions unless otherwise indicated by the context: (i) reference to a party to a document includes that party's successors and permitted assigns; (ii) "including" and other similar words are not words of limitation; (iii) an agreement, deed, covenant, representation or warranty on the part of two or more persons binds them jointly and severally; (iv) general words following words describing a particular class or category are not restricted to that class or category; (v) "Law" means any Commonwealth or Australian state legislation regulations and the general law and includes in particular the Commonwealth Competition and Consumer Act 2010 and regulations as amended from time to time and the Commonwealth Personal Property Securities Act 2009 and regulations as amended from time to time; and (vi) "PPSA" means Personal Property Securities Act 2009; "Purchase Monies Securities Interest" or "PMSI" has the meaning given in section 14 of the PPSA; Corporations Act 2001 means the Commonwealth Corporation Act 2001 as amended from time to time.