

# **2pi Software TERMS AND CONDITIONS**

Valid from 1 December 2018

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## Terms & Conditions

These are the Terms and Conditions on which TRIPLEACS PTY LTD, trading as 2pi Software (and hereafter referred to as such) is willing to trade with you. Any variation to these terms and conditions must be in writing and signed by an authorised officer of 2pi Software.

2pi Software reserves the right to modify these Terms and Conditions with a notice period of 30 days.

### Use of Services

You, the customer, as an individual or representative of a group or company, may use our goods and/or services (hereafter referred to as "Product"), provided that you are of legal age to form a binding contract and are not barred from receiving such Product under the laws of Australia or other jurisdictions.

In order to access our Product, you are required to provide current and factual identification, contact, and other information as part of the registration process. 2pi Software will not be liable for any loss or damage as a result of your failure to provide accurate information.

You are responsible for the confidentiality of your information and for all activities that occur under your account. You are solely responsible for all content within your account.

### Acceptable Conduct

You are responsible for the actions of all users of your account, and any data, information, artwork, graphic, design or other media that is created, stored, displayed by, or transmitted by your account while using 2pi Software's Product.

You will not engage in any activity that interferes with or disrupts 2pi Software's provision of the Product. 2pi Software's Product may only be used for lawful purposes.

### Prohibited Usage

You agree that any of the below activities are considered prohibited usage and will result in immediate action being taken, including suspension, cancellation or retrieval of the Product, without a refund. 2pi Software reserve the right to impose fees, pursue civil remedies and/or refer information to law enforcement services or another entity as proscribed under relevant legislation, without providing advance notice.

Activities considered prohibited usage include, but are not limited to, the following:

- The transmission, distribution, disclosure, or storage of any information, data or material in violation of Australian or state regulation or law, or by the common law;
  - including but not limited to, material protected by copyright, trademark, trade secret, or other intellectual property rights.
- Use of 2pi Software's services to facilitate infringement of any law in any way.
- Spam and Unsolicited Bulk Email (UBE);
  - 2pi Software has a zero tolerance policy on spam, Junk Email or UBE. Spam, Junkmail and UBE are defined as: the sending of the same, or substantially similar, unsolicited electronic mail messages, whether commercial or not, to more than one recipient;

- This prohibition extends to the sending of unsolicited mass mailings from another service, which in any way implicates the use of 2pi Software's Products whether or not the message actually originated from our network;
- 2pi Software will maintain reasonable measures in line with industry standards to ensure that hosting services under its management are not vulnerable to third party misappropriation for the purposes of spam, Junk Email or UBE.
- Providing False Data on any Contract or Application, including fraudulent use of credit card numbers.

### **Price & Description**

The price and description of the Product as described in our price list or quote, 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. We may change the price list at any time without prior notice.

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.

### **Payment**

Other than cases where directly negotiated or agreed arrangements are made, payment is strictly in advance and must be paid within the number of days proscribed in the quote/order/invoice.

The preferred payment method is by Electronic Fund Transfer to the nominated account. 2pi Software is not responsible for any additional bank fees, interest charges, finance charges, overdraft charges, or other fees. 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 any additional account processing fees levied by the financial institution.

A deposit will only be accepted if we agree to such an arrangement. Deposits are a stated percentage upfront upon which we will supply you with the goods and invoice you for the remainder after delivery.

Our prices are exclusive of delivery/installation/set-up costs. Unless explicitly waived, these costs are payable in addition to our Product and must be paid by you at the same time as you pay for our Product. Any additional costs will be listed separately on the invoice.

We reserve the right to charge a late fee if any invoice remains unpaid after the due date, subject to the terms outlined in Overdue Accounts.

2pi Software may prospectively change specified rates and charges each year. However we will announce any rate changes well in advance.

If you have an issue or wish to dispute any payment/account or invoice, you must notify our credit department in writing ([accounts@2pisoftware.com](mailto:accounts@2pisoftware.com)) prior to the due date. You may NOT offset against or deduct from the price of the Product any money you claim we owe you.

### **Government Charges**

Our prices are shown exclusive of GST unless 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.

### **Overdue Accounts**

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.

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.

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 resell all or any of them, or suspend, terminate or otherwise cease any hosting or software services provided to you.

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 to enable us to do this.

2pi Software has no obligation to extend our payment terms to you for any period 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 and any other expense incurred by any debt collection agency we retain to recover 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.

### **Claims and Returns**

You must report to us in writing any damage or incorrect supply of any Product within **7 business days** from receipt, 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 discretion.

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

We will ONLY accept the return 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 any Product to us.

If we accept the return of the 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.

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.

If you wish to return any Product which has been correctly supplied, you must let us know in writing within **5 business days** of the date of delivery.

Delivery is deemed to take place when our Product passes into your or your agent's exclusive control (either physical or online/virtual) or when you collect the Product or arrange for its collection from us or when full payment of any amounts owing is received.

If we agree to the return of a correctly supplied Product, we may charge you a handling or restocking fee of either \$50.00 per Product or 10% of the price of Product returned plus any delivery costs.

### **Orders**

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

Unless we agree special arrangements, such as an authorisation code, we assume any order and/or approval of 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.

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 over and above our normal delivery costs.

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.

Orders for collection from 2pi Software must be collected by you or your agent within 5 business days of you being notified of its availability, unless other arrangements are agreed. Failure to do so entitles us to cancel the order without notice, and return, or on-sell your Product as we see fit.

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, additional handling and redelivery fees if you are unable to take delivery of our Product at the time we deliver our Product to you.

## **Ownership**

### *Hardware*

You do not own any of our Product in your possession until all amounts owing to us on any account have been paid for in full.

Until payment as been made in full, 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. Should you do so, however, 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, and you will pay the proceeds to us as soon as you receive them. We have the right to trace and claim such proceeds until all outstanding amounts have been paid in full, including any additional costs incurred by overdue accounts.

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 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.

### *Hosting Services*

2pi Software retain ownership of all licenced software (including apps), networks and hosting platforms. You agree to a contract term for service with a defined timeframe as set out in the signed agreement.

2pi Software reserves the right to suspend access to any hosting platform, network or software package to you if, in our judgement, your account is the source or target of a violation of any of these Terms and Conditions or for any other reason which 2pi Software chooses.

2pi Software reserves the right to terminate hosting, network or other such online services without notice for continued and repeated violations of these terms and conditions or any additional terms or service, and you fail to remedy the default within **twenty (20) business days** after receiving Notice requiring the remedy of the default.

If inappropriate activity is detected, all your accounts will be deactivated until an investigation is complete, including but not limited to any legal or judicial action.

These Terms and Conditions specifically prohibits the use of our service for illegal activities. Therefore, you agree that 2pi Software may disclose any and all information including assigned IP numbers, account history, account use, etc. to any court who sends us a valid Court Order, without further consent or notification to the you.

Prior notification is not assured. In extreme cases, law enforcement will be contacted regarding the activity.

You will not be credited for the time your accounts were suspended or residual costs from termination.

Any hosting service may be terminated by either party on giving ninety (90) days notice without cause.

Termination for whatever cause shall be without prejudice to any rights or obligations that have accrued or are owing prior to such termination, including but not limited to payments of money.

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 void any liability we may have to you under these Terms and Conditions and retrieve, cancel or suspend any Product we provide.

### **Warranty**

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.

### **Third Party Warranty**

Third party services purchased, engaged or utilised by you but not supplied by 2pi Software, including but not limited to SEO, web design tools, software packages, hardware, components etc, are at your own undertaking. 2pi Software does not provide an express or implied warranty on the quality of their product(s) nor the outcomes expected and is under no obligation to extend support for externally managed or purchased Products.

Where 2pi Software supplies a third party product, 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.

2pi Software is not a manufacturer or authorized service centre, therefore it is highly recommended that, unless you have a current support agreement with 2pi Software, 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 manufacturers provide support services for 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 2pi software 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, 2pi Software cannot apply for a warranty claim on your 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 2pi Software, 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 time frame 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.

2pi Software also reserves the right to apply any service fees for any warranty claims to cover all costs incurred including inbound & return freight, supplier/manufacturer 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.

### **Your Relationship with Us**

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

### **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.

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, knowhow, inventions, improvements, discoveries and confidential processes and includes without limitation artistic works, images, illustrations and photographs and any adaptation or concept relating to it.

### **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.



**Governing Law**

These Terms and Conditions and the relationship between you and 2pi Software 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) without regard to its conflict of law provisions.

**Statute of Limitations**

You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of 2pi Software's Product or these Terms and Conditions must be filed within one (1) year after such claim or cause of action arose or be forever barred.

**Limitation of Liability**

You acknowledge that the Product provided is of such a nature that these may be interrupted for many reasons other than the negligence of 2pi Software and that damages resulting from any interruption are difficult to ascertain.

You agree that 2pi Software shall not be liable for any damages arising from such causes beyond the direct and exclusive control of 2pi Software.

You further acknowledge that 2pi Software's liability for its own negligence may not in any event exceed an amount equivalent to charges payable by you for the Product during the period damages occurred. In no event shall 2pi Software be liable for any special or consequential damages, loss or injury.

2pi Software is not responsible for any damages your business may suffer. 2pi Software does not make or give any express, implied or written warranties including, without limitation, the warranties of merchantability or fitness for a particular purpose, or arising from a course of dealing, usage or trade practice, with respect to any product provided under or incidental to these terms.

This includes loss of data resulting from delays, non deliveries, wrong delivery, and any and all interruptions caused by 2pi Software.

In no event will 2pi Software be liable to the you for any loss of business, contracts, profits or anticipated savings or for any other indirect or consequential or economic loss whatsoever.

**Indemnity**

2pi Software wishes to emphasize that in agreeing to these Terms and Conditions, you indemnify 2pi Software for any violation of said Terms and Conditions that results in loss to 2pi Software or the bringing of any claim against 2pi Software by any third party.

This means that if 2pi Software is sued because of you or your customer's activity, you will pay any damages awarded against 2pi Software, plus all costs and reasonable attorney's fees.

**Privacy**

Our Privacy Policy, available on our website or upon request to us, forms part of these Terms and Conditions.

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 other than those outlined in relevant Australian legislation.

In accordance with Australian Privacy Principles, 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; complying with legislative and regulatory requirements or as otherwise permitted or authorised by law; considering any other application you may make to us; and managing our rights and obligations in relation to external payment systems, e.g. credit card schemes and debit payment schemes

We may also from time to time, with your permission, use this data when performing our administrative and marketing operations; 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 that may interest you.

Any unauthorised access or disclosure of information, held by 2pi Software, that a reasonable person would conclude is likely to result in serious harm to any individual(s) to whom the information relates or information that is lost in circumstances where unauthorised access or disclosure of information is likely to occur and it can be reasonably concluded that such an outcome would result in serious harm to any of the individuals to whom the information relates, shall be deemed to be a data breach and will be treated, and dealt with, as outlined under the Privacy Act 1988.

#### **Data Management**

It is your sole responsibility to maintain regular offsite backups of your data. You will not hold 2pi Software liable for incomplete, out of data or corrupt data recovered from backups and archives.

2pi Software is under no obligation to maintain a backup of your data. In the event of hard disk failure or data corruption of web hosting or dedicated server 2pi Software will restore data from the last known verified archive.

2pi Software is not responsible for ensuring you are using the most recent version of any third party software nor are responsible for any subsequent data management issues which may result.

#### **Whole Agreement**

These Terms and Conditions (including any quotes, orders, agreements, policies, guidelines or amendments that may be presented to you via email or regular mail from time to time) constitute the entire agreement between you and 2pi Software 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 written notice. All transactions after the date specified in such notices, or 30 days from the date of notification, will be subject to the altered Terms and Conditions. You agree that 2pi Software may provide you with notices, including those regarding changes to these Terms and Conditions, by email or regular mail. 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.

#### **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 Product for a particular purpose. Any advice, recommendation, information or assistance provided by us is provided without any liability whatsoever.

**Waiver and Severability of Terms**

The failure of 2pi Software to exercise or enforce any right or provision of these Terms and Conditions shall not constitute a waiver of such right or provision.

If any provision of these Terms and Conditions is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavor to give effect to the party's intentions as reflected in the provision, and the other provisions of these Terms and Conditions remain in full force and effect.

**Interpretation**

In these Terms and Conditions unless otherwise indicated by the context:

- i. Product means any and all goods, services or hardware provide by 2pi Software now and into the future;
- ii. references to "we" or "us" or "our" refer to TRIPLEACS PTY LTD and its trading name - 2pi Software);
- iii. reference to a party to a document includes that party's successors and permitted assigns;
- iv. "including" and other similar words are not words of limitation;
- v. an agreement, deed, covenant, representation or warranty on the part of two or more persons binds them jointly and severally;
- vi. general words following words describing a particular class or category are not restricted to that class or category;
- vii. "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; the Commonwealth Personal Property Securities Act 2009 and regulations as amended from time to time; and the Privacy Act 1988 and regulations as amended from time to time; and
- viii. "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.