

## **1. DEFINITIONS**

### **1.1 The words**

- (a) "Trieste Nextrack" means Trieste Next Pty Ltd ABN 57 638 935 350.
- (b) "Customer" means the applicant for a credit account with Trieste Nextrack in respect of the Parts and/or to whom the Parts are sold and/or in whose name an account is maintained by Trieste Nextrack for the purchase of the Parts.
- (c) "Parts" mean all or any Access to the Platform, Goods or Services and Parts ordered by the Customer under the Proposal.
- (d) "GST" means a Goods and Services Tax as defined in A New Tax System (Goods and Services) Act 1999.
- (e) "Platform" means the Nextrack Platform operated by Trieste Nextrack and its related parties.

## **2. DELIVERY**

2.1 Trieste Nextrack will use reasonable endeavours to complete delivery of the Access to the Platform, any Goods or Services and Parts, however, delivery dates or periods quoted are estimates only and subject to prompt receipt by Trieste Nextrack of all information from the Customer necessary to permit Trieste Nextrack to proceed with the supply and/or delivery and/or installation of the Access to the Platform, any Goods or Services and Parts.

2.2 Trieste Nextrack has no liability whatsoever for any loss or damage suffered by the Customer as a consequence of any delay or failure to deliver any of the Access to the Platform, any Goods or Services and Parts irrespective of the cause.

## **3. PURCHASE PRICE**

3.1 The purchase price unless otherwise stated does not include any delivery charges, packaging, freight and insurance, all of which may be added to the purchase price or otherwise will be paid by the Customer or reimbursed by the Customer to Trieste Nextrack as Trieste Nextrack may elect.

3.2 All expressed prices, charges, fees or other amounts payable by the Customer to Trieste Nextrack have been calculated without including an amount for GST, unless it is clearly stated that the prices, charges, commissions, fees or other amounts payable include GST. Each payment made by the Customer to Trieste Nextrack will be made together with an additional amount equal to the GST on the supply or component of the supply (made or to be made) giving rise to or in connection with the payment.

## **4. PAYMENT TERMS**

4.1 Terms of payment are in accordance with the Customer's credit approval as amended in writing from time to time or otherwise **7 days from the date of invoice**.

4.2 Trieste Nextrack may at its discretion charge interest on any monies which are overdue at the rate of four percent (4%) per annum over the base ANZ Indicator Lending Rate as quoted periodically calculated on a daily basis. Any payment subsequently voided by any statutory entitlement is deemed not to have been made.

5. PASSING OF RISK AND TITLE

5.1 Risk in the Access to the Platform, any Goods or Services and Parts passes to the Customer upon the earlier of delivery of the Access to the Platform, any Goods or Services and Parts to the Customer or to a carrier for delivery to the Customer.

5.2 Title in any Goods or Services and Parts passes to the Customer when all monies owing to Trieste Nextrack on any account whatsoever have been fully paid by the Customer.

5.3 Before payment the Customer holds any Goods or Services and Parts on trust for Trieste Nextrack.

5.4 The customer will cause the Access to the Platform, any Goods or Services and Parts to be kept separate and conspicuously identified as Trieste Nextrack 's; treat the Access to the Platform, any Goods or Services and Parts with all proper care; insure any Goods or Services and Parts against all usual risks and ensure that the interest of Trieste Nextrack is noted with the insurer.

6. CANCELLATION

6.1 The Customer has no right of cancellation of any order where items have been specifically ordered for that Customer.

7. COMPLIANCE WITH ORDER AND DEFECTIVE PARTS

7.1 Unless the Customer gives written notice within 48 hours of receipt of any Goods or Services and Parts then the delivery of any Goods or Services and Parts is deemed to be in complete compliance with and in satisfaction of the order.

7.2 The Customer waives any claim whatsoever against Trieste Nextrack in respect of any Goods or Services and Parts unless 48 hours written notice is given.

7.3 Where the Customer gives notice, Trieste Nextrack has the right to examine any of the Goods or Services and Parts.

7.4 Trieste Nextrack is not obliged to accept the return by the Customer of any of the Goods or Services and Parts unless the Goods or Services and Parts are defective.

7.5 Trieste Nextrack is not under any obligation to compensate the Customer for labour or other expenses incurred by the Customer in removing or replacing defective Goods or Services and Parts.

8. LIMITATION ON LIABILITY

8.1 Trieste Nextrack 's liability to the Customer arising in connection with the supply or use of the Access to the Platform, any Goods or Services and Parts, including defective Access to the Platform, or any Goods or Services and or Parts whether under common law, equity or statute and whether direct or indirect is limited (to the extent permitted by law and not otherwise expressly provided for) to the cost of replacement of the Goods or Services and Parts or supply of equivalent Goods or Services and Parts.

8.2 To the greatest extent legally possible Trieste Nextrack has no liability for any incidental, consequential or indirect damages.

8.3 To the extent permitted by law and except as provided herein, all implied conditions, warranties, and representations are hereby expressly negated and excluded.

8.4 Trieste Nextrack is not liable for failure to perform or complete any of its obligations hereunder due to causes beyond the reasonable control of Trieste Nextrack.

#### 9. DEFAULT

9.1 In the event of any default by the Customer in respect of payment, Trieste Nextrack is authorised in the name of the Customer and in this respect and for all related purposes the Customer irrevocably appoints Trieste Nextrack its attorney and in the name of and as the act of the Customer:

(a) where the Goods or Services and Parts have not been resold to enter upon any premises and take back into its possession any Goods or Services and Parts;

(b) where the Goods or Services and Parts have been resold to be subrogated to the Customer's rights in respect of the Goods or Services and Parts held by any third party and take back into its possession any Goods or Services and Parts.

9.2 The Customer hereby indemnifies and saves harmless Trieste Nextrack in respect of any action taken by it under the preceding paragraph.

#### 10. CREDIT APPLICATION

10.1 Where the Customer has applied for and been provided with Credit by Trieste Nextrack, it is a condition of this Agreement that the Customer has complied with Trieste Nextrack's requirements as to security for payment specified by Trieste Nextrack in the Customer's credit approval or as stated by Trieste Nextrack prior to acceptance of an order or as required by Trieste Nextrack at any time after acceptance should Trieste Nextrack consider such requirement is reasonable.

#### 11. MISCELLANEOUS

11.1 Parties - A reference to a party to this document includes that party's successors and permitted assigns.

11.2 Governing law and jurisdiction - This document is governed by the law applicable in Queensland. Each party submits to the non-exclusive jurisdiction of the Courts of Queensland.

11.3 Entire agreement - This agreement contains all the terms on which Goods or Services and Parts are sold and credit is given.

11.4 Trieste Nextrack provides approved users access to the Nextrack Platform. Use of that platform is conditional on accepting the Terms and Conditions of Use for Nextrack

11.5 Variations - A variation of this agreement must be in writing and signed by or on behalf of each party to it.

11.6 Joint and several liability - Where there is more than one Customer the liability of each is joint and several.