



ComIT Services Pty Ltd
Terms and Conditions of Sale
Corporate Policy

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1 Introduction

At ComIT Services Pty Ltd, we respect both your and our rights. We want to maintain your confidence in our dealing with you so we have developed and provided this Terms and Conditions of Sale to inform you of our practices and policies regarding the sale and ongoing support of the products and services we provide.

We are committed to providing you with adequate information so you can make an informed decision whether you wish to do business with us.

The following terms and conditions apply to the web site <http://www.tracksnap.com/> and any contract for sale of Goods and Services by the Company.

2 Interpretation

- a) "Company" means and includes ComIT Service Pty Ltd ACN 80 090 697 957 (ABN 80 090 697 957) and any of its related bodies corporate;
- b) "Deliver" includes supply as the context requires;
- c) "Goods" means all products and services sold or supplied by the Company; and
- d) "Person" includes a firm or corporation; and
- e) "Purchaser" means any person (either alone or jointly with another party) contracting or offering to contract with the Company.
- f) "Place of Delivery" means the place of delivery designated by Purchaser and agreed to by The Company

3 Quotations

Quotations are valid for 30 days from the date of quotation unless some other period is specified in writing by the Company. Quotations are subject to withdrawal or variation by the Company at any time. Any quotation made by the Company is not an offer to sell and no order based on a quotation will bind the Company until the order is accepted by the Company. Unless otherwise agreed in writing, all orders are subject to acceptance by the Company within 30 days of receipt by the Company of the Purchaser's order. Any modifications agreed to verbally will only be effective after confirmation by the Company in writing.

4 Offer and Acceptance

No Contract shall come into existence until the Purchaser's order has been accepted by The Company and such acceptance has been received by the Purchaser. The contract shall be deemed to be concluded at the time and place where such acceptance is received by the Purchaser. The Purchaser warrants that it is buying for its own internal use only and not for re-sale purposes.

The products sold and/or services rendered are subject to the Terms and Conditions to the exclusion of any other terms and conditions stipulated or referred to by Purchaser. The Purchaser acknowledges that it is aware of the contents of and agrees to be bound by the Terms and Conditions.

5 Orders, price and payment

Unless credit terms have been expressly agreed by The Company, payment for the products or services shall be made in full before physical delivery of products or services.

Purchaser shall pay for all shipping and handling charges unless otherwise stated in the offer of sale or current promotion.

The Purchaser shall bear all country, provincial, government, state and local sales, use, goods and services, value added, excise, privilege and similar levies/taxes.

Unless otherwise stated, all prices quoted for Goods are exclusive of GST and the Company will charge GST on all invoiced items in accordance with the applicable rate at the time the invoice is prepared.

Time for payment is critical. The Company reserves the right to charge interest at the rate of 2% above the base commercial floating rate for Commonwealth Bank of Australia in Sydney for overdue payments.

6 Cost Variation Delivery

If between the date of the agreement and the date of Delivery, the cost to the Company of any of the Goods or their components increase for any reason, the Company reserves the right to amend its prices for any undelivered portion of the order, but the Purchaser shall have the right to cancel the outstanding balance of the order within 7 days from the date of notification of the price amendment. The Company reserves its right to amend its purchase price if additional requests are made by the Purchaser in relation to the Goods.

7 Delivery

- a) The Company shall deliver the products to "Place of Delivery".
- b) The Company may, at its discretion, deliver the products by instalments in any sequence. Where the products are so delivered by instalments, each instalment shall be deemed to be the subject of a separate contract and no default or failure by The Company in respect of any one or more instalments shall vitiate the Contract in respect of products previously delivered or undelivered products.
- c) Any dates quoted by The Company for the delivery of the products are approximate only and shall not form part of the Contract. The Company shall not be liable for any delay in delivery of the products and/or services, howsoever caused. Late Delivery or failure to Deliver does not entitle the Purchaser to cancel any order or part order.

8 Acceptance of products

Unless the Purchaser notifies The Company of any defect in the goods or services on the day of delivery and such notification of the details are confirmed in writing by the Company within two days, the Products shall be deemed to have been accepted by the Purchaser as being in good condition and in accordance with the Contract.

9 Warranty and Returns

9.1 Warranty

- a) The Company will notify Purchaser of any applicable manufacturers' warranty in relation to the Products. To the extent permitted by law, The Company's entire responsibility with respect to warranties for the Products is to pass on to Purchaser the benefit of any such warranties. Subject to clause 8.1c software Products are not warranted under these Terms. Such software Products are warranted in accordance with the relevant licence agreements that govern their use.
- b) To the extent permitted by law, the manufacturers' warranties referred to in clause 8.1a are in substitution for all other terms, conditions and warranties, whether implied by statute or otherwise (including implied warranties with respect to merchantability and fitness for purpose) and all such terms, conditions and warranties are expressly excluded.
- c) Certain legislation may imply warranties or conditions or impose obligations upon The Company which cannot be restricted or modified or cannot be excluded except to a limited extent. These Terms must be read subject to those statutory provisions. If those statutory provisions apply, to the extent to which The Company is able to do so, its liability will be limited, at its option, to:
 - i. in the case of products: the replacement of the products or re-supply of equivalent products; repair of the products; payment of the cost of replacing the products or acquiring equivalent products; or the payment of the cost of having the products repaired; and
 - ii. in the case of services: the supply of the services again; or the payment of the cost of having the services supplied again
- d) All warranties on offer and provided are subject to the manufacturer's policies and time frames for repair unless explicitly stated otherwise. The Company is not responsible nor liable for the time taken for shipping the goods to and from the manufacturer nor any costs accrued by the Purchaser in relation to warranty repairs. The Purchaser will need to ensure that shipping times to the manufacturer are included in the manufacturer's warranty time.

9.2 Cancellation & Returns

- a) Any order may only be cancelled by mutual agreement and in the event of cancellation of an order, the Purchaser undertakes to reimburse and indemnify the Company for any costs, expenses or charges incurred by the Company in relation to the order.
- b) A purchaser may, within 7 days of the delivery of the goods to the Purchaser, return the Goods to the Company for a credit. The Purchaser is responsible for the payment of any costs associated with the return (eg. Freight, insurance and any damage to the goods). A 20% handling fee plus an allowance for any damage will be deducted by the Company.

10 Liability

- a) The Company's total liability herein in respect of each event or series of connected events shall not exceed the total price paid for the purchase of products and/or services under these Terms and Conditions.
- b) The Purchaser shall indemnify The Company and keep The Company fully and effectively indemnified against any loss of or damage to any property or injury to or death of any persons caused by any negligent act or omission or wilful misconduct of the Purchaser, its employees, agents or sub-contractors or by any breach of its contractual obligations arising out of these Terms and Conditions.
- c) The Company and Purchaser agree that The Company will not be liable for Products not being available for use, or for data or software which is lost, corrupted, deleted or altered. The Company shall not be liable to the Purchaser for any incidental, indirect, special or consequential damages arising out of or in connection with the purchase, use or performance of products or services, even if The Company has been advised of their possibility.
- d) Any service response times stated by The Company in the service contracts are approximate only and The Company shall not be liable for any direct or indirect loss or damage arising from its failure to meet such response times, howsoever occasioned.
- e) Any typographical, clerical or other error or omission in sales literature, quotation, price list, acceptance of offer, invoice or other documents or information issued by The Company shall be subject to correction without any liability on the part of The Company.

11 Description and Specification

Whilst every effort is made to ensure the accuracy of the descriptions, illustrations and material contained in any catalogue, price list, brochure, leaflet, specification sheets, technical data sheets, material safety data sheets or other descriptive matter or advice provided by or on behalf of the Company, the Purchaser acknowledges and accepts that this descriptive matter or advice describes the general nature of the Goods only and does not form a part of any order or agreement or amount to a representation or warranty. The Company reserves the right to modify the design of Goods without notice.

12 Designs and Specifications

- a) The Company will not be liable for any defect in Goods arising from designs, drawings or specifications supplied to the Company by the Purchaser or its agents.
- b) The Company reserves the right to make any changes to designs, drawings or specifications supplied to the Company which are required to comply or conform with any applicable safety or statutory requirements or which do not materially affect the quality or usage of the Goods by the Purchaser.
- c) The Company does not warrant or guarantee that any Goods supplied by the Company which are based in whole or in part upon any designs, drawings or specifications supplied to the Company will achieve any standard or performance or be suitable for any specific purpose.

13 Intellectual Property Rights

- a) All copyright or other intellectual property rights (eg product formulations) in the Goods remain the sole property of the Company. The supply of Goods implies a license to the Purchaser to use the Goods but for no other purpose. The Purchaser undertakes not to utilise, copy, reproduce or disclose or permit others to utilise, copy, reproduce or disclose any intellectual property without the prior written consent of the Company.
- b) The Purchaser warrants that Goods supplied by the Company which are based in whole or in part upon designs, drawings or specifications supplied to the Company by or on behalf of the Purchaser do not infringe any intellectual property rights held by a third party.
- c) The Purchaser agrees to indemnify and keep indemnified the Company, its servants and agents against all actions, liabilities, claims, demands, costs, expenses and damages which the Company, its servants or agents may incur, sustain or be subjected to in consequence of it, having at the request of the Purchaser, applied a design or any other markings on the Goods.
- d) Where the Purchaser provides information regarding Goods which are to be used for products which require particular identification pursuant to any law or regulation of a competent Government Authority, compliance with any such law or regulation is the sole responsibility of the Purchaser who agrees to indemnify the Company against all liability, claims, costs and expenses of any nature arising from any infringement or non-compliance. No liability is accepted nor warranty given concerning the readability or suitability of symbols, codes or wording on the Goods.

14 Equipment

All equipment and other items used in the manufacture of the Goods shall, in the absence of a written agreement to the contrary, remain the exclusive property of the Company notwithstanding any contribution by the Purchaser in respect of the cost of their production, use or maintenance.

15 Limitation of Liability

To the extent permitted by law, the Company shall not be liable for any loss (including consequential loss), damage, deterioration, deficiency, defect or other fault or harm arising from, caused by or concerning the supply of Goods by or on behalf of the Company. In particular, the Company shall not be liable for:

- a) defects or damage caused in whole or in part by misuse, abuse, neglect, error, electrical or other overload, improper installation, repair, alteration or accident;
- b) transport, installation, removal, labour or other costs;
- c) modifications or changes to the Goods not authorised in writing by the Company or any other unauthorised acts by the Purchaser or a third party;
- d) Goods not manufactured by the Company (although the Company will endeavour to pass on to the Purchaser the benefit of any claim made by the Company and accepted by the manufacturer of such Goods under any warranty given by that manufacturer); and
- e) technical advice or assistance given or tendered by the Company to the Purchaser whether or not in connection with the manufacture or supply of the Goods.

The Company's liability shall in all circumstances be limited to:-

- a) the replacement of the Goods; or
- b) the supply of equivalent Goods; or

- c) payment of the cost of replacing the Goods or acquiring equivalent Goods; or
- d) the repair of the Goods or payment of the cost of having the Goods repaired;

as the Company may select in its absolute discretion.

16 No Warranty

The Company gives no warranty as to the fitness of the Goods for any particular purpose or use and shall have no liability in that regard. Goods supplied under this agreement should only be used after the Goods have been properly tested by or on behalf of the Purchaser. The risks involved and any cost of testing the Goods will be the Purchaser's responsibility.

17 Risk

All risk in the Goods Delivered by the Company to the Purchaser passes to the Purchaser as soon as the Goods have been Delivered to the Purchaser, their carrier or agent.

18 Title

Although risk in the Goods passes on Delivery to the Purchaser or the Purchaser's agent or carrier, title in the goods shall not pass to the Purchaser until payment in full in cleared funds of the purchase price for the Goods has been received by the Company for all Goods sold by the Company to the Purchaser for which payment is due;

19 Force Majeure

The Company will make all reasonable efforts to supply the Goods, but failure to do so for any reason beyond the reasonable control of the Company including, but not limited to, an Act of God, war, strikes, lock-outs, fire, flood or drought, or owing to the Company's inability to procure materials or supplies except at increased prices due to any of the foregoing causes, shall not constitute a breach of contract by the Company and its obligation to supply the Goods will be suspended. In those circumstances, the Company may at any time cancel this agreement or any unfulfilled part, or renew it upon cessation of the reason which previously made it unable to supply the Goods.

20 Colour Match

If the Company is to match any shade or colour then, unless specified tolerances have been agreed between the Purchaser and the Company, the Company's normal colour quality standards and tolerances shall apply (as determined by the Company from time to time in its sole discretion).

21 Recovery of Costs

All costs and expenses incurred by the Company to remedy any breach by the Purchaser of these terms and conditions shall be recoverable from the Purchaser in addition and without prejudice to any other rights, powers and remedies held by the Company.

22 Acknowledgement

The Purchaser acknowledges as a condition of the purchase of the Goods from the Company that:

- a) The terms and conditions contained in this agreement are reasonable and necessary to protect the legitimate interests of the Company;
- b) It has read and understands the conditions in this agreement; and
- c) No undue influence, pressure or unfair tactics were exerted in the formation of the agreement.

23 Waiver

If at any time the Company does not enforce any of these terms and conditions of sale or grants the Purchaser time or other indulgence, the Company shall not be construed as having waived that term or condition or its right to enforce that term or condition.

24 Severability

All clauses, words, phrases, sentences and paragraphs of this agreement are separate and independent, each being severable from the others. If any of them or any parts are declared void, invalid or otherwise unenforceable by any court of competent jurisdiction then they shall be deemed to be severed to the extent that they are void, invalid or unenforceable but the remainder of this agreement shall remain in full force and effect.

25 Jurisdiction

These terms and conditions will be governed by and construed according to the law of Queensland, Australia and the parties agree to submit to the jurisdiction of the Courts and Tribunals of that State.

If you have any questions, concerns or problems, we encourage you to email to admin@tracksnap.com. We greatly appreciate your suggestions on how we can improve our communication with our staff and customers or any aspects of our business.