

POS support

terms & conditions

IMPORTANT PLEASE READ CAREFULLY

TriniTEQ International Pty Ltd ('TriniTEQ') agrees to supply the Customer with goods, services and/or technical assistance as detailed in this customer support agreement subject to the terms and conditions set out below. The Customer, in taking out a customer support agreement with TriniTEQ, for the goods, services and/or technical assistance specified in this document agrees to the said terms and conditions.

1. Privacy

The Customer consents to TriniTEQ holding and using personal information provided by the Customer for the purpose of Customer's use of the Services and TriniTEQ's dealings with the Customer. Such information will be held and used subject to TriniTEQ's privacy policy which can be found at; www.triniteq.com and which is incorporated into these terms and conditions. Client is responsible for ensuring that the Customer complies with its obligations of privacy to its customers or other persons whose personal information is provided to the Customer. The Customer warrants and represents that it has the authority or consent of each person who has provided personal information to provide that personal information to TriniTEQ for the purposes of TriniTEQ providing the Services to the Customer.

2. Validity of Proposal

This proposal is valid for a period of 30 days from the date shown on the document. After this date, pricing may be required to be re-submitted, in writing, to ensure the rights of both TriniTEQ and you.

3. Payment

Client will pay for all the products and Services as specified on page 2 of this document.

4. Passing of Risk

Risk of loss or damage of the goods shall pass to the Customer upon delivery of the goods and services to the Customer.

5. Support Services

- 5.1. TriniTEQ's Customer Support Services (including Telephone Support, Premium Support, Dial-In Support, On-Site Technical Service, In-Version Upgrades, Software Upgrades, Site Visits, System Servicing, System Programming, On-Site Customer Training, and/or POS System & Business Analysis) will not be provided to locations, regardless of the level of their Customer Support Agreement, if the Customer's Account exceeds TriniTEQ trading terms.
- 5.2. The installation, support and maintenance of all TriniTEQ software, and hardware must only be carried out by an authorised TriniTEQ support person. Should installation, support and/ or maintenance be performed or carried out on TriniTEQ hardware and/ or software by a person, on persons who do not hold current TriniTEQ support authorisation, all TriniTEQ warranties shall be voided and this support agreement will be suspended, pending the re-installation of TriniTEQ hardware and/ or software by authorised TriniTEQ personnel.
- 5.3. All hardware and software items not purchased direct from TriniTEQ will not be included within this support contract. There will be no support given to non-TriniTEQ hardware or software, by TriniTEQ at any time.
- 5.4. The Customer is required to subscribe to a broadband internet service to facilitate dial in support. If the customer fails to maintain the broadband connection standard fees will apply for issues that would typically be resolved by remote access including menu programming.
- 5.5. In the event of a change of internet service provider, or an interruption of internet service to the Customer, a callout may be required by TriniTEQ to reconfigure the network and re enable dial in access services, standard fees and charges will apply.
- 5.6. TriniTEQ support agreements inclusive of software updates & upgrades are available for eligible TriniTEQ customers using TriniTEQ POS Version 8 (or above) only, by request. If the customer/ contract holder is not currently running TriniTEQ POS Software Version 8 (or above), a major POS software upgrade is required to bring the TriniTEQ POS software up to version 8 to access inclusive updates/ upgrades.
- 5.7. Inclusive software updates / upgrades are available only to customers holding a continuous (ongoing) TriniTEQ support contract, for a minimum period of one year or longer.
- 5.8. An established/ viable internet connection is required onsite to receive remote software updates.
- 5.9. Inclusive software updates/ upgrades are offered annually (one per customer, per year), by request.
- 5.10. Inclusive software updates/ upgrades are only available remotely (offsite).

6. Inclusions & Exclusions POS Customer Support Agreement/ System Programming

The following services are included within the scope of the POS TriniTEQ support agreement and will not be charged for in addition to the service provided within this agreement; (a) Dial in support (1) Issues and problems with TriniTEQ POS software (listed in the POS Software Licensing Agreement, (2) Operational issues, or problems with TriniTEQ POS software (POS Software Licensing Agreement). The following System programming services are chargeable as per the rates stipulated above as per "System Programming":(a) Menu changes, (b) Additional reporting templates\Automated reports, (c) 3rd party integration and export file/ data creation and implementation, (d) EFTPOS integration, configuration and implementation, (e) The reinstallation of TriniTEQ, or Third-party software on repaired hardware, (f) The installation, or reinstallation of software on hardware not supplied by TriniTEQ (g) Back Office software migrations, (h) Training, (i) Hardware repairs.

7. Repairs/ Goods

Repairs to hardware are not covered as part of this service contract and may be charged in addition to the Customer Support Agreement except if these repairs are covered by TriniTEQ's Standard back-to-base Hardware Warranty. TriniTEQ's Standard back-to-base Hardware Warranty does not cover repair costs if damage is the result of the following:

- a) General wear and tear;
- b) Defects that have been caused by misuse, mishandling, neglect, adjustments, damage caused by accident, non-adherence to operating and maintenance instructions and/or improper voltage;
- c) Damage caused by liquid spillage;
- d) Failure resulting from use of the goods under arduous or unreasonable climatic or operating conditions;
- e) The goods have been installed, and or serviced by unauthorised TriniTEQ personnel/ persons;
- f) Failure resulting from installation errors or incorrect installation procedure;
- g) Failure caused by consumables not complying with manufacturer's recommendation or acceptable industry standards;
- h) Goods that have had identification marks and numbers altered or removed;
- i) Damage caused as a result of faulty / incorrect cabling, electrical installation, electrical faults, power spikes and/or surges;

POS support

terms & conditions

- j) Abnormal maintenance and service adjustment as part of goods operating instructions (please refer to System Maintenance Guide for appropriate instructions);
 - k) Consumables. This includes, but not limited to, the following items; belts, cathode ray tubes, lamps, lenses, magnetic heads, print ribbons, print heads, touchscreen overlays, protective stationery and windows;
 - l) Goods that have been returned to TriniTEQ, or a preferred TriniTEQ repairer in inadequate or unsuitable packaging.
 - m) Goods damaged during freight or delivery, be it be a third-party company, or by the customer.
8. **Loan/Rental Equipment**
- 8.1. In the event that an item of hardware needs to be repaired under warranty, TriniTEQ will endeavor to provide loan equipment where possible. This loan equipment (if available) will be of a standard similar to the equipment that is requiring repair. Additional charges may apply to deliver and set up of loan equipment.
 - 8.2. Loan equipment is only available to Customers with valid support agreements.
 - 8.3. Rental equipment may be/ may not be available to the Customer in some cases for a nominal fee.
 - 8.4. The customer will be charged for the repair of loan equipment if it is damaged during use by the Customer, or in transit.
9. **Liability**
- In no event shall TriniTEQ or its agents be liable for any damages whatsoever (including and without limitation, to damages for loss of business profits, business interruption, loss of business information, or other pecuniary loss or indirect, special, incidental, or consequential damages of any kind) arising out of the use of or inability to use the software, hardware, or consultancy services provided, or system programming errors even if TriniTEQ has been advised of such damages.**
10. **Severability**
- If any provision of this Customer Support Agreement is held invalid, unenforceable or illegal for any reason this Customer Support Agreement shall remain otherwise in full force apart from such provision, which shall be deemed deleted.
11. **Additional Charges**
- Additional charges may apply if TriniTEQ representatives have to wait for the customer, other parties, or wait for services provided by other parties at scheduled meetings, and/or incurs unforeseen expenses in the course of providing service as a part of this contract.
12. **Callouts**
- A callout is classed as any call that requires a representative of TriniTEQ to attend customer's head office, premises, or venue(s) for purpose of system software or hardware support. A callout will not occur without a support call being made aware, and a call out will only be undertaken if other measures to resolve the issue fail.
13. **Renewal/ Minimum Support Time Period**
- 13.1. Renewal of contracts will be automatic at end of term unless cancelation has been received in writing at least 30 days prior to the expiry date. All contracts will be reviewed 2 months prior to expiry and notification of any rate increases and renewal will be issued at that time.
 - 13.2. The minimum term offered by TriniTEQ, for any TriniTEQ support agreement is a period of 3 months.
14. **TriniTEQ back-to-base Hardware Warranty**
- This warranty applies only to the hardware products manufactured by or for TriniTEQ that can be identified by the "TriniTEQ" tradename or logos affixed to it. The warranty does not apply to any non-TriniTEQ hardware product or any software, even if packaged or sold with the TriniTEQ hardware. However, TriniTEQ may mediate third party warranty repairs on the Customer's behalf. Manufacturers, customers, or publishers, other than TriniTEQ may provide their own warranties to the Customer, but TriniTEQ, in so far as permitted by law, provides their products "as is". Software distributed by TriniTEQ with or without the TriniTEQ brand name is not covered under this warranty. Refer to the Software Licensing Agreement for details regarding the Customers rights with respect to use.
15. **TriniTEQ Software Warranty**
- 15.1. TriniTEQ warrants that TriniTEQ Software will substantially conform to the description of the Software and will be provided with reasonable care and skill.
 - 15.2. TriniTEQ does not warrant that the Software will be provided error free or uninterrupted. Client accepts that, to the fullest extent permitted by law, TriniTEQ accepts no liability for any errors or defects or omissions arising out of the use or performance or availability of the Services or the data, results or other information generated by use of the Services, or from the availability of Third Party Services integrated with TriniTEQ Software, Services and/ or goods.
16. **No Other Warranties**
- Except as set out in clauses 5, and 6 or where implied by law, TriniTEQ gives no other guarantee or warranty and makes no representation or undertaking in relation to the goods, services, and software or their performance or availability or suitability for any purpose. Except to the extent that any law or statute prohibits the exclusion of any guarantee, condition, warranty or remedy all other guarantees, conditions, warranties or remedies are excluded.
17. **Non-excludable Rights**
- Where any law or statute implies a term into this agreement, or confers a right or remedy, which cannot be excluded, the liability of TriniTEQ is limited to the maximum extent allowed under the applicable law or statute.
18. **Remedy for Breach of Warranty, etc.**
- 18.1. Subject to any law or statute which prohibits the exclusion or limitation of any guarantee, condition or warranty, TriniTEQ's liability and Client's remedy for breach of any express warranty, or guarantee, condition, warranty or right or remedy implied or conferred by law, is limited to, at TriniTEQ's option, one or more of:
 - 18.2. In the case of any goods: (a) replacement of the goods or supply of goods and software; (b) correction or repair of the goods or software; (c) payment of the cost of replacing the goods or software, or acquiring equivalent goods or software; or (d) payment of the cost of repairing or correcting the goods or software.
 - 18.3. In the case of any services: (a) supplying the services again; or (b) payment of the cost of having the services supplied again.
19. **Intellectual Property**
- TriniTEQ retains ownership of all intellectual property rights in relation to the Services including (without limitation) any patent, software design right, copyright, semiconductor or circuit layout right, confidential or proprietary information, know how, trade mark, domain name or other right. TriniTEQ will own all intellectual property rights in the Services including any improvements or developments made by TriniTEQ, the Customer or any person engaged by TriniTEQ or the Customer.
20. **Ownership of Website Content**
- Any Content and data loaded into the Software by the Customer or provided to TriniTEQ by the Customer under this Agreement or

POS support

terms & conditions

otherwise, and all User Content, shall at all times remain the property of the Customer. TriniTEQ shall have no rights in such Content or User Content other than the limited right to use such content for the purposes of providing the Services and expressly set forth in this Agreement.

21. TriniTEQ Services

TriniTEQ agrees to provide the Services to Customer for the Term. TriniTEQ may subcontract the provision of the Services to authorised TriniTEQ subcontractors (only).

22. Limitations

- 22.1. TriniTEQ give no express warranties other than those that are set out above and where implied conditions or warranties cannot be lawfully excluded. TriniTEQ excludes all implied condition and warranties, including, but not limited to, implied conditions or warranties with respect to merchantability or fitness for particular purpose.
- 22.2. To the extent permitted by law, this warranty and the remedies set forth above are exclusive and in lieu of all other warranties, remedies and conditions, whether oral or written, statutory, express or implied. As permitted by applicable law, TriniTEQ specifically disclaims any and all statutory or implied warranties, including without limitation, warranties of merchantability and fitness for a particular purpose and warranties against hidden or latent defects. If TriniTEQ cannot lawfully disclaim statutory or implied warranties then to the extent permitted by law, all such warranties shall be limited in duration to the duration of the express warranty and to the repair or replacement service as determined by TriniTEQ in its sole discretion.
- 22.3. Except as provided in this warranty and to the maximum extent permitted by law, TriniTEQ is not responsible for direct, special, incidental or consequential damages resulting from any breach of warranty or condition or under any other legal theory, including but not limited to loss of use, loss of revenue, loss of actual or anticipated profits (including loss of profits on contracts); loss of the use of money; loss of anticipated savings; loss of business; loss of opportunity; loss of good will; loss of reputation; loss or damage to or corruption of data or any indirect or consequential loss or damage howsoever caused including the replacement of equipment and property, any cost of recovering, programming or reproducing any program or data stored in or used with TriniTEQ Products.

23. Cabling

- 23.1. The installation of power and data cabling is not included in this proposal and whilst TriniTEQ does not undertake the installation of cabling, we are happy to recommend a qualified contractor and work in conjunction with this party.
- 23.2. It is imperative that all cabling is completed to the specifications outlined by TriniTEQ. The installation of any goods will not be carried out until TriniTEQ is satisfied as to the quality of the installation and that cabling meets the specifications outlined. Therefore, cabling not carried out to TriniTEQ's specification voids all warranties.

24. Use of Data

Subject to any law or statute which prohibits the exclusion or limitation of any guarantee, condition or warranty or remedy, TriniTEQ accepts no responsibility for, and excludes liability for, any interpretation or use of the data, results or other information generated by use of the Services by the Customer or any other person. The Customer acknowledges and agrees that such data, results or other information may contain errors or omissions. Without limiting any other provision in this agreement, TriniTEQ will not be liable to the Customer (whether for breach of contract, negligence or otherwise) for any loss or damage suffered by the Customer or any third party by reason of any reliance on or the interpretation or use of the data, results or other information generated by use of the Services or for any error or defect or omission arising out of the use of the Services.

25. Liability

Except as expressly provided elsewhere in this agreement, and subject to any law or statute which prohibits the exclusion or limitation of any guarantee, condition, warranty or remedy, TriniTEQ will be under no liability to the Customer and liability is excluded (whether for breach of contract, negligence or otherwise) in respect of any loss or damage which may be suffered or incurred by the Customer which may arise directly or indirectly in respect of the supply or availability or use of the Services under this agreement.

26. Consequential Loss

Subject to any law or statute which prohibits the exclusion or limitation of any guarantee, condition, warranty or remedy, TriniTEQ will be under no liability to the Customer and liability is excluded (whether for breach of contract, negligence or otherwise) for any special, incidental, indirect, or consequential damages whatsoever (including, without limitation, damages for loss of business or profits, loss resulting from business interruption, loss of data or business information, loss resulting from any claim by any third party or any other pecuniary loss) arising out of the supply or availability of the Services or any use of the Services, even if TriniTEQ has been advised of the possibility of such damages.

27. Third Party Facilities

The Customer acknowledges that TriniTEQ relies on Third Party Facilities to deliver the Services under this agreement and that such Third-Party Facilities may fail or malfunction or not be available through no fault of TriniTEQ. Subject to any law or statute which prohibits the exclusion or limitation of any guarantee, condition, warranty or remedy, TriniTEQ will be under no liability to the Customer and liability is excluded (whether for breach of contract, negligence or otherwise) in respect of any loss or damage which may be suffered or incurred by the Customer caused or contributed to by a defect, fault or failure of any Third-party Facilities or if Third-party facilities are not available.

28. Resources and Access

The Customer will provide at its own cost any resources, access, co-operation and assistance reasonably required by TriniTEQ for the purpose of the provision of the Services including (without limitation) the matters specified in this agreement. The Customer will provide full and safe access to the Customer's premises or other facilities as is reasonably required by TriniTEQ for the purpose of providing the Services including (without limitation): (a) providing any necessary equipment, materials and information to TriniTEQ; (b) providing all facilities, services and accessories reasonably required to enable TriniTEQ to comply with its obligations; (c) providing TriniTEQ, if requested, a suitably qualified or informed representative, agent or employee to work with TriniTEQ on project requirements, access, security procedures and any other matter within the Customer's knowledge or control which will assist TriniTEQ in complying with its obligations.

29. Compliance with Laws

The Customer must comply with any law, legislation, regulation or code of practice applicable to the Services and their use. TriniTEQ is not responsible for, and excludes liability for, any breach of any applicable law, legislation, regulation or code of practice by the Customer in relation to use of the Services. The Customer must not use the Services for any illegal purpose including (without limitation): (a) unlawful, harassing, defamatory, libellous, tortuous, abusive, threatening, or obscene communications of any kind; (b) material that infringes or violates any third party's copyright, trademark, trade secret, privacy or other proprietary or property right;

POS support

terms & conditions

(c) material that could constitute a criminal offence, give rise to civil liability or otherwise violate any applicable law or regulation; (d) objectionable material, including without limitation, content that contains blatant bigotry, racism, or hatred, or that promotes illegal activities or physical harm against anyone; (e) spam, chain letters, junk mail or any other type of unsolicited mass e-mail to people or entities who have not agreed to be part of such mailings; (f) viruses or other harmful, disruptive or destructive files; (g) content containing nudity or pornographic material of any kind to people under age 18, or to anyone on lists that are not limited to people age 18 or older. TriniTEQ may remove material which in TriniTEQ's reasonable opinion constitutes a breach of the above terms.

30. Security

TriniTEQ will adopt and implement measures to protect the integrity and security of data provided by the Customer, such measures being of the sort and standard reasonably to be expected of a provider of services of the sort provided by TriniTEQ. The Customer acknowledges that the integrity or security of data may be compromised even where such measures are adopted and implemented or where there is a failure of Third-party facilities to protect the integrity and security of data provided by the Customer. Subject to any law or statute which prohibits the exclusion or limitation of any guarantee, condition, warranty or remedy, TriniTEQ will be under no liability to the Customer and liability is excluded (whether for breach of contract, negligence or otherwise) in respect of any loss or damage which may be suffered or incurred by the Customer as a result of any breach of security of the data provided by the Customer or unauthorised access to the Customer's data or computer systems or any loss of data.

31. Updates to which the Customer is Entitled

Where the Customer is entitled to updates or additional features as part of the Services, these will be provided by TriniTEQ when TriniTEQ determines that they are available and compatible for use with the Services.

32. Updates Outside Scope of Services

Where updates or additional features which are not included in the Services become available and TriniTEQ offers these updates or additional features to the Customer, and the Customer wishes to obtain such updates or additional features, the Customer will not be entitled to such updates or additional features until payment is made for them. On payment, such updates and additional features will be deemed to have been incorporated into the description of the Services.

33. Prohibited Use

The Customer agrees that in using the Services: (a) The Customer will not disrupt or interfere with another user's use or enjoyment of the Services; (b) The Customer will not use or attempt to use another person's account, service or system without authorisation from the owner, nor will the Customer disrupt or interfere with the security of, or otherwise abuse, the Services, system resources or accounts, or any servers or networks connected to the Services; (c) The Customer will not attempt to obtain unauthorised access to Services, or to private lists on the Services, or to other services or resources provided by TriniTEQ; (d) The Customer is solely responsible for its actions in relation to Services, and for any communications transmitted under The Customer's account; (e) The Customer will not forge header or address information or otherwise impersonate another or create a false identity; (f) The Customer will not systematically extract, collect or harvest, through electronic means or otherwise, any data or data fields, including without limitation, lists, list owner identities, or email addresses, from any website other than those the Customer owns; (g) The Customer will not disrupt the normal operations of the Services or cause any substantial change in the usual content or frequency of emails sent using the Services; (j) The Customer will not use the Services to send unsolicited emails or other communications; (k) The Customer will comply with all applicable laws and regulations, related to privacy and data collection.

34. Indemnity

The Customer will indemnify TriniTEQ and keep TriniTEQ indemnified against any loss or damage suffered by TriniTEQ (including any legal costs incurred) which arises out of circumstances where the Customer is in breach of any of these terms and conditions, including (without limitation) where a claim is brought against TriniTEQ by any other person as a result of a breach of these terms and conditions by the Customer.

35. Termination

TriniTEQ may terminate this agreement with immediate effect, including the supply of the Services, by giving notice to the Customer if: (a) The Customer is in breach of this agreement and the breach is not capable of being remedied; (b) The Customer is in breach of this agreement and, in the case of a breach which is capable of being remedied, the Customer fails to remedy the breach within 30 days of receipt of written notice of the breach; (c) The Customer fails to pay any amount due to TriniTEQ within 21 days of receiving a written demand for payment; (d) The Customer is subject to any application for winding up or liquidation, or for the appointment of a receiver or manager, or is subject to any other form of insolvency event; (e) TriniTEQ discontinues the Services or part of them. If this agreement is terminated, the Customer must immediately stop using the Services. On termination, all payments due to TriniTEQ must be made within 21 days.

36. Confidentiality

Each party will keep confidential any confidential information belonging to the other party disclosed pursuant to this agreement. Confidential information belonging to TriniTEQ includes the unpublished content and methodology of the Services, dealings with the Customer and any other information relating to the business, operations or products of TriniTEQ, other than information in the public domain or information which subsequently enters the public domain (except as a result of a breach of this agreement).

37. Severance

If any term or part of this agreement is, or becomes, for any reason invalid or unenforceable at law, that term or part of this agreement will be and is hereby deemed to be severed from this agreement without affecting the remainder of this agreement and the remainder of this agreement will continue to be valid and enforceable.

38. Assignment

This agreement is personal to the Customer and may not be assigned or otherwise transferred by the Customer to any third party except with the prior written consent of TriniTEQ (which consent will not be withheld or delayed unreasonably). TriniTEQ may assign the benefit of this agreement to a third party on giving notice to the Customer.

39. Amendment

This agreement may be amended by TriniTEQ from time to time. Any amendments will be notified to Client and will take effect from the date on which such notice is received by Client.

40. Entire Agreement

This agreement constitutes the entire agreement between the parties in respect of the supply of the TriniTEQ Services. This agreement supersedes all prior representations, warranties, agreements, understandings, negotiations and discussions whether oral or written, express or implied, collateral or otherwise, by or between the parties pertaining to the subject matter of this agreement.

POS support

terms & conditions

41. **Force Majeure**

A party will not be liable to the other for any delay or failure to perform its obligations under this agreement by reason of any circumstances beyond its reasonable control.

42. **Copyright of Hardware and Software**

The software supplied is covered by Australian and International copyright law. This means it is illegal to Copy in any way shape or means either the HARDWARE or SOFTWARE for other than back up purposes.

43. **Notices**

Any notice given under this agreement must be in writing and authorised by the party giving the notice. A notice may be given by email provided that such email is actually received by the intended recipient of the email.

44. **Authority**

Where a person (including a company or other entity) enters into this agreement on its own behalf and on behalf of the other persons specified in **the TriniTEQ POS Customer Support Agreement**, that person warrants and represents that it has authority to act on behalf of those other persons and to enter into this agreement on their behalf. This agreement is binding on each of the entities specified in **the TriniTEQ POS Customer Support Agreement** and each is included in the definition of the Customer.

45. **Governing Law and Jurisdiction**

This agreement is governed by and is to be construed in accordance with the laws of Western Australia. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Western Australia.