
Dematec Automation Pty Ltd T/A Dematec – Terms & Conditions of Trade

1. Definitions

- 1.1 **“Client”** means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting Dematec to provide the Services as specified in any proposal, quotation, order, invoice, or other documentation, and:
- (a) if there is more than one Client, is a reference to each Client jointly and severally; and
 - (b) if the Client is a partnership, it shall bind each partner jointly and severally; and
 - (c) if the Client is on behalf of or part of, a Trust, shall be bound in its own capacity as a trustee; and
 - (d) includes the Client’s executors, administrators, successors, and permitted assigns.
- 1.2 **“Confidential Information”** means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party’s intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, Contracts, client information (including but not limited to, **“Personal Information”** such as: name, address, D.O.B, occupation, driver’s license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
- 1.3 **“Contract”** means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.4 **“Cookies”** means small files which are stored on a user’s computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website and can be accessed either by the web server or the client’s computer. **If the Client does not wish to allow Cookies to operate in the background when using Dematec’s website, then the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to making enquiries via the website.**
- 1.5 **“Dematec”** means Dematec Automation Pty Ltd T/A Dematec, its successors and assigns or any person acting on behalf of and with the authority of Dematec Automation Pty Ltd T/A Dematec.
- 1.6 **“Goods”** means all Goods or Services supplied by Dematec to the Client at the Client’s request from time to time (where the context so permits the terms ‘Goods’ or ‘Services’ shall be interchangeable for the other).
- 1.7 **“GST”** means Goods and Services Tax as defined within the “A New Tax System (Goods and Services Tax) Act 1999” (Cth).
- 1.8 **“Price”** means the Price payable (plus any GST where applicable) for the Goods as agreed between Dematec and the Client in accordance with clause 6 below. All pricing is in Australian Dollars (AUD) unless explicitly stated otherwise in another currency.

2. Acceptance

- 2.1 The parties acknowledge and agree that:
- (a) they have read and understood the terms and conditions contained in this Contract; and
 - (b) the parties are taken to have exclusively accepted and are immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of the Goods.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 The Client acknowledges that the supply of Goods on credit shall not take effect until the Client has completed a credit application with Dematec and it has been approved with a credit limit established for the account.
- 2.5 In the event that the supply of Goods requested exceeds the Client’s credit limit and/or the account exceeds the payment terms, Dematec reserves the right to refuse delivery.
- 2.6 In the event that Dematec is required to provide the Services urgently, that may require Dematec’s staff to work outside normal business hours (including, but not limited to, working through lunch breaks, weekends and/or Public Holidays) then Dematec reserves the right to charge the Client additional labour costs (penalty rates will apply), unless otherwise agreed between Dematec and the Client.
- 2.7 These terms and conditions may be meant to be read in conjunction with Dematec’s Hire Form, and where the context so permits, the terms ‘Goods’ or ‘Services’ shall include any supply of Equipment, as defined therein.
- 2.8 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Communications Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. Errors and Omissions

- 3.1 The Client acknowledges and accepts that Dematec shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
- (a) resulting from an inadvertent mistake made by Dematec in the formation and/or administration of this Contract; and/or
 - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by Dematec in respect of the Services.
- 3.2 In circumstances where the Client is required to place an order for Goods, in writing, or otherwise as permitted by these terms and conditions, the Client is responsible for supplying correct order information such as, without limitation, measurements and quantity, when placing an order for Goods (whether they are made to order Goods or not) (**“Client Error”**). The Client must pay for all Goods it orders from Dematec notwithstanding that such Goods suffer from a Client Error and notwithstanding that the Client has not taken or refuses to take Delivery of such Goods. Dematec is entitled to, at its absolute discretion to waive its right under this sub-clause in relation to Client Errors.

4. Change in Control

- 4.1 The Client shall give Dematec not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client’s details (including but not limited to, changes in the Client’s name, address, contact phone or fax number/s, change of trustees, or business practice). The Client shall be liable for any loss incurred by Dematec as a result of the Client’s failure to comply with this clause.

5. Quotations

- 5.1 Unless specifically specified by brand, make, or model by the Client, Dematec reserves the right to substitute comparable Goods (or components of the Goods), and in all such cases Dematec will notify the Client in advance of any such substitution.

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- 5.2 Dematec shall reserve the right to revise any quoted Price if that quotation is not accepted within thirty (30) days or other specified timeframe on the quotation.
- 5.3 All Prices are quoted 'Ex-Works' or 'Ex-Workshop' and therefore freight and insurance are not included in the quotation. Should Dematec consequently be requested to arrange freight and insurance, then Dematec reserves the right to charge a handling fee for making such arrangements.
- 6. Price and Payment**
- 6.1 At Dematec's sole discretion, the Price shall be either:
- (a) as indicated on any invoice provided by Dematec to the Client upon placement of an order for Goods; or
 - (b) the Price as at the date of Delivery of the Goods according to Dematec's current price list, as previously disclosed to the Client upon the Client's placement of an order for Goods; or
 - (c) Dematec's quoted Price (subject to clause 6.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 6.2 Dematec reserves the right to change the Price:
- (a) if a variation to the Goods which are to be supplied is requested; or
 - (b) if a variation to the Services originally scheduled (including any applicable plans or specifications, or Goods/Services not requested for in the original quotation) is requested; or
 - (c) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, limitations to accessing the site, safety considerations, availability of machinery, prerequisite work by a third party not being completed, the absence of unloading/lifting equipment, or hidden pipes, and wiring in walls etc.) which are only discovered on commencement of the Services; or
 - (d) in the event of increases to Dematec in the cost of labour (including any rise and fall) or materials (including the increase in overseas transactions as a consequence of variations in foreign currency rates of exchange and/or international freight and insurance charges) which are beyond Dematec's control.
- 6.3 Variations will be charged for on the basis of Dematec's quotation, and will be detailed in writing, and shown as variations on Dematec's invoice. The Client shall be required to respond to any variation submitted by Dematec within ten (10) working days. Failure to do so will entitle Dematec to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 6.4 At Dematec's sole discretion, a reasonable non-refundable deposit may be required upon placement of an order for Goods, in accordance with any quotation provided by Dematec or as notified to the Client prior to the placement of an order for Goods.
- 6.5 Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by Dematec, which may be:
- (a) on delivery of the Goods;
 - (b) by way of instalments/progress payments in accordance with Dematec's payment schedule;
 - (c) for certain approved Clients, thirty (30) days following the end of the month in which a statement is posted to the Client's address or address for notices;
 - (d) the date specified on any invoice or other form as being the date for payment; or
 - (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by Dematec.
- 6.6 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Client and Dematec.
- 6.7 Dematec may in its discretion allocate any payment received from the Client towards any invoice that Dematec determines and may do so at the time of receipt or at any time afterwards. On any default by the Client Dematec may re-allocate any payments previously received and allocated.
- 6.8 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by Dematec nor to withhold payment of any invoice because part of that invoice is in dispute. Once in receipt of an invoice for payment, if any part of the invoice is in dispute, then the Client must notify Dematec in writing within three (3) business days, the invoice shall remain due and payable for the full amount, until such time as Dematec investigates the disputed claim, no credit shall be passed for refund until the review is completed. Failure to make payment may result in Dematec placing the Client's account into default and subject to default interest in accordance with clause 16.1.
- 6.9 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to Dematec an amount equal to any GST Dematec must pay for any supply by Dematec under this or any other agreement for the sale of the Goods. The Client must pay GST, without deduction or set-off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
- 6.10 Where applicable, the Client accepts that VAT or other sales tax, duties, etc. that may apply to overseas orders shall be added to the Price of the Goods as appropriate with that country's requirements.
- 6.11 Dematec reserves the right to wait for receipt of final cleared funds prior to the issue of relevant drawings and programs (including passwords if applicable).
- 7. Delivery of Goods**
- 7.1 Delivery ("**Delivery**") of the Goods is taken to occur at the time that:
- (a) the Client or the Client's nominated carrier takes possession of the Goods at Dematec's address; or
 - (b) Dematec (or Dematec's nominated carrier) delivers the Goods to the Client's nominated address even if the Client is not present at the address.
- 7.2 The cost of Delivery will be payable by the Client in accordance with the quotation provided by Dematec to the Client, or as otherwise notified to the Client prior to the placement of an order for Goods.
- 7.3 Any time specified by Dematec for Delivery of the Goods is an estimate only and Dematec will not be liable for any loss or damage incurred by the Client because of Delivery being late. However, both parties agree that they shall make every endeavour to enable the Goods to be delivered at the time and place as was arranged between both parties. If Dematec is unable to supply the Goods as agreed solely due to any action or inaction of the Client, then Dematec shall be entitled to charge a reasonable fee for redelivery and/or storage.

8. Risk

- 8.1 Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery.
- 8.2 If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Client, Dematec is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Dematec is sufficient evidence of Dematec's rights to receive the insurance proceeds without the need for any person dealing with Dematec to make further enquiries.
- 8.3 Dematec shall be entitled to rely on the accuracy of any plans, specifications (including CAD designs) and other information provided by the Client. The Client acknowledges and agrees that in the event that any of this information provided by the Client is inaccurate, Dematec accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
- 8.4 The Client warrants that any structures to which the Goods are to be affixed are able to withstand the installation of the Goods and that any electrical connections (including, but not limited to, meter boxes, main switches, circuit breakers, and electrical cable) are of suitable capacity to handle the Goods once installed. If for any reason (including the discovery of asbestos, defective or unsafe wiring) that Dematec, or employees of Dematec, reasonably form the opinion that the Client's premises is not safe for the installation of Goods to proceed then Dematec shall be entitled to delay installation of the Goods until Dematec is satisfied that it is safe for the installation to proceed.
- 8.5 Any advice, recommendation, information, assistance or service provided by Dematec in relation to Goods or Services supplied is given in good faith to the Client, or the Client's agent and is based on Dematec's own knowledge and experience and shall be accepted without liability on the part of Dematec. Where such advice or recommendations are not acted upon then Dematec shall require the Client or their agent to authorise commencement of the Services in writing. Dematec shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Services.
- 8.6 The Client acknowledges that Dematec is only responsible for parts that are replaced by Dematec and does not at any stage accept any liability in respect of previous services and/or goods supplied by any other third party that subsequently fail and found to be the source of the failure, the Client agrees to indemnify Dematec against any loss or damage to the Goods, or caused by the goods, or any part thereof howsoever arising.
- 8.7 Unless otherwise agreed to, Dematec's responsibility to commissioning of the Goods shall be limited to ensure the Goods comply with any specification supplied by the Client.

9. Product Specifications

- 9.1 The Client acknowledges that:
- (a) all descriptive specifications, illustrations, drawings, data, dimensions, ratings and weights stated in Dematec's or the manufacturer's fact sheets, price lists or advertising material, are approximate only and are given by way of identification only. The Client shall not be entitled to rely on such information, and any use of such does not constitute a sale by description, and does not form part of the Contract, unless expressly stated as such in writing by Dematec;
 - (b) while Dematec may have provided information or figures to the Client regarding the performance of the Goods, the Client acknowledges that Dematec has given these in good faith, and are estimates based on industry prescribed estimates.

10. Access

- 10.1 The Client shall ensure that Dematec has clear and free access to the site at all times to enable them to undertake the Services. Dematec shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted, paved or grassed areas, ceiling tiles and panels, face brickwork and rendered masonry services) unless due to the negligence of Dematec.
- 10.2 The Client shall provide Dematec with instructions, information, facilities and assistance that Dematec would reasonably require to enable the performance of the Services, and where the Client is unable to provide such, then it shall be the Client's responsibility to make suitable arrangements and the Client's expense.

11. Underground Locations

- 11.1 Prior to Dematec commencing any work the Client must advise Dematec of the precise location of all underground services on the site and clearly mark the same. The underground mains and services the Client must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on site.
- 11.2 Whilst Dematec will take all care to avoid damage to any underground services the Client agrees to indemnify Dematec in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 11.1.

12. Compliance with Laws

- 12.1 Both the Client and Dematec agree that they will at all times ensure that they comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services, including work health and safety laws relating to building/construction sites, and any other relevant safety standards or legislation.
- 12.2 All work will be tested to ensure that it is electrically safe and is in accordance with the wiring rules and other standards applying to the electrical installation under the Electrical Safety Regulations. All of the cabling work will comply with the Australian and New Zealand Wiring standards.
- 12.3 The Client shall obtain (at the expense of the Client) all licenses and approvals (including local Government approvals) that may be required for the Services, unless otherwise agreed.

13. Title

- 13.1 Dematec and the Client agree that ownership of the Goods shall not pass until:
- (a) the Client has paid Dematec all amounts owing to Dematec; and
 - (b) the Client has met all of its other obligations to Dematec.
- 13.2 Receipt by Dematec of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 13.3 It is further agreed that, until ownership of the Goods passes to the Client in accordance with clause 13.1:
- (a) the Client is only a bailee of the Goods and must return the Goods to Dematec on request;

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- (b) the Client holds the benefit of the Client's insurance of the Goods on trust for Dematec and must pay to Dematec the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
- (c) the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for Dematec and must pay or deliver the proceeds to Dematec on demand;
- (d) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of Dematec and must sell, dispose of or return the resulting product to Dematec as it so directs;
- (e) the Client irrevocably authorises Dematec to enter any premises where Dematec believes the Goods are kept and recover possession of the Goods;
- (f) Dematec may recover possession of any Goods in transit whether or not Delivery has occurred;
- (g) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of Dematec; and
- (h) Dematec may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

14. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)

- 14.1 The Client must inspect the Goods on Delivery and must within thirty (30) days of Delivery notify Dematec in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow Dematec to inspect the Goods.
- 14.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (**Non-Excluded Guarantees**).
- 14.3 Dematec acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 14.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, Dematec makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. Dematec's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 14.5 If the Client is a consumer within the meaning of the CCA, Dematec's liability is limited to the extent permitted by section 64A of Schedule 2.
- 14.6 If Dematec is required to replace the Goods under this clause or the CCA, but is unable to do so, Dematec may refund any money the Client has paid for the Goods.
- 14.7 If the Client is not a consumer within the meaning of the CCA, Dematec's liability for any defect or damage in the Goods is:
 - (a) limited to the value of any express warranty or warranty card provided to the Client by Dematec at Dematec's sole discretion;
 - (b) limited to any warranty to which Dematec is entitled, if Dematec did not manufacture the Goods;
 - (c) otherwise negated absolutely.
- 14.8 Subject to this clause 14, returns will only be accepted provided that:
 - (a) the Client has complied with the provisions of clause 14.1; and
 - (b) Dematec has agreed that the Goods are defective; and
 - (c) the Goods are returned within a reasonable time at the Client's cost (if that cost is not significant); and
 - (d) the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 14.9 Notwithstanding clauses 14.1 to 14.8 but subject to the CCA, Dematec shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
 - (a) the Client failing to properly maintain or store any Goods;
 - (b) the Client using the Goods for any purpose other than that for which they were designed;
 - (c) the Client continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - (d) the Client failing to follow any instructions or guidelines provided by Dematec;
 - (e) fair wear and tear, any accident, or act of God.
- 14.10 Dematec may in its absolute discretion accept non-defective Goods for return in which case Dematec may require the Client to pay handling fees of up to twenty-five percent (25%) of the value of the returned Goods plus any freight costs.
- 14.11 Notwithstanding anything contained in this clause if Dematec is required by a law to accept a return, then Dematec will only accept a return on the conditions imposed by that law.

15. Intellectual Property

- 15.1 Where Dematec has designed, drawn or developed Goods and/or software applications for the Client, then the copyright in any designs and drawings, documents and software applications shall remain the property of Dematec. Under no circumstances may such designs, drawings and documents be used without the express written approval of Dematec.
- 15.2 Notwithstanding anything herein, the intellectual property rights in Dematec's software applications do not vest in the Client and there is no assignment of the intellectual property rights in Dematec's software applications to the Client. Dematec hereby grants to the Client an irrevocable, non-exclusive and non-transferable licence to use and reproduce Dematec's software applications for the purposes of this Contract only. The information and data recorded by the Client in any computer program and database will be owned by the Client.
- 15.3 The Client will use any software supplied by Dematec strictly in terms of the licence under which it is supplied and shall not modify, change or copy any such software. The Client will use any third-party software supplied by Dematec, and identified as such, strictly in terms of the licence under which it is supplied.
- 15.4 The Client warrants that all designs, specifications or instructions given to Dematec will not cause Dematec to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify Dematec against any action taken by a third party against Dematec in respect of any such infringement.

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- 15.5 The Client agrees that Dematec may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which Dematec has created for the Client.
- 16. Default and Consequences of Default**
- 16.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at Dematec's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 16.2 If the Client owes Dematec any money, the Client shall indemnify Dematec from and against all costs and disbursements:
- (a) incurred; and/or
 - (b) which would be incurred and/or
 - (c) for which by the Client would be liable;
- in regard to legal costs on a solicitor and own client basis incurred in exercising Dematec's rights under these terms and conditions, internal administration fees, Dematec's Contract fees owing for breach of these terms and conditions', including, but not limited to, contract default fees and/or recovery costs (if applicable), as well as bank dishonour fees.
- 16.3 Further to any other rights or remedies Dematec may have under this Contract, if a Client has made payment to Dematec, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by Dematec under this clause 16 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Contract.
- 16.4 Without prejudice to Dematec's other remedies at law Dematec shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Dematec shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to Dematec becomes overdue, or in Dematec's opinion the Client will be unable to make a payment when it falls due;
 - (b) the Client has exceeded any applicable credit limit provided by Dematec;
 - (c) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
- 17. Cancellation**
- 17.1 Without prejudice to any other remedies the parties may have, if at any time either party is in breach of any obligation (including those relating to payment) under these terms and conditions ("**the Breaching Party**") the other party may suspend or terminate the supply or purchase of Goods and/or Services to the other party, with immediate effect, by providing the Breaching Party with written notice. Neither party will be liable for any loss or damage the other party suffers because one of the parties has exercised its rights under this clause.
- 17.2 If Dematec, due to reasons beyond Dematec's reasonable control, is unable to deliver any Goods and/or Services to the Client, Dematec may cancel any Contract to which these terms and conditions apply or cancel Delivery of Goods and/or Services at any time before the Goods and/or Services are delivered by giving written notice to the Client. On giving such notice Dematec shall repay to the Client any money paid by the Client for the Goods and/or Services. Dematec shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 17.3 The Client may cancel Delivery of the Goods and/or Services by written notice served within forty-eight (48) hours of placement of the order. If the Client cancels Delivery in accordance with this clause 17.3, the Client will not be liable for the payment of any costs of Dematec, except where a deposit is payable in accordance with clause 6.4. Failure by the Client to otherwise accept Delivery of the Goods and/or Services shall place the Client in breach of this Contract.
- 17.4 Cancellation of orders for Goods made to the Client's specifications, or for non-stocklist items, will not be accepted once production has commenced, or an order has been placed.
- 18. Privacy Policy**
- 18.1 All emails, documents, images, or other recorded information held or used by Dematec is Personal Information, as defined and referred to in clause 18.4, and therefore considered Confidential Information. Dematec acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1988 ("**the Act**") including the Part IIIC of the Act being Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDB) and any statutory requirements, where relevant in a European Economic Area ("**EEA**"), under the EU Data Privacy Laws (including the General Data Protection Regulation "**GDPR**") (collectively, "**EU Data Privacy Laws**"). Dematec acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by Dematec that may result in serious harm to the Client, Dematec will notify the Client in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Client by written consent, unless subject to an operation of law.
- 18.2 Notwithstanding clause 18.1, privacy limitations will extend to Dematec in respect of Cookies where the Client utilises Dematec's website to make enquiries. Dematec agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client's:
- (a) IP address, browser, email client type and other similar details;
 - (b) tracking website usage and traffic; and
 - (c) reports are available to Dematec when Dematec sends an email to the Client, so Dematec may collect and review that information ("**collectively Personal Information**")
- If the Client consents to Dematec's use of Cookies on Dematec's website and later wishes to withdraw that consent, the Client may manage and control Dematec's privacy controls via the Client's web browser, including removing Cookies by deleting them from the browser history when exiting the site.**
- 18.3 The Client agrees for Dematec to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) about the Client in relation to credit provided by Dematec.

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- 18.4 The Client agrees that Dematec may exchange information about the Client with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Client; and/or
 - (b) to notify other credit providers of a default by the Client; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two (2) years.
- 18.5 The Client consents to Dematec being given a consumer credit report to collect personal credit information relating to any overdue payment on commercial credit.
- 18.6 The Client agrees that personal credit information provided may be used and retained by Dematec for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Goods; and/or
 - (b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Goods; and/or
 - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
 - (d) enabling the collection of amounts outstanding in relation to the Goods.
- 18.7 Dematec may give information about the Client to a CRB for the following purposes:
- (a) to obtain a consumer credit report;
 - (b) allow the CRB to create or maintain a credit information file about the Client including credit history.
- 18.8 The information given to the CRB may include:
- (a) Personal Information as outlined in 18.4 above;
 - (b) name of the credit provider and that Dematec is a current credit provider to the Client;
 - (c) whether the credit provider is a licensee;
 - (d) type of consumer credit;
 - (e) details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
 - (f) advice of consumer credit defaults (provided Dematec is a member of an approved OAIC External Disputes Resolution Scheme), overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Client no longer has any overdue accounts and Dematec has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
 - (g) information that, in the opinion of Dematec, the Client has committed a serious credit infringement;
 - (h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 18.9 The Client shall have the right to request (by e-mail) from Dematec:
- (a) a copy of the Personal Information about the Client retained by Dematec and the right to request that Dematec correct any incorrect Personal Information; and
 - (b) that Dematec does not disclose any Personal Information about the Client for the purpose of direct marketing.
- 18.10 Dematec will destroy Personal Information upon the Client's request (by e-mail) or if it is no longer required unless it is required to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 18.11 The Client can make a privacy complaint by contacting Dematec via e-mail. Dematec will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to reach a decision on the complaint within thirty (30) days of receipt of the complaint. If the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at www.oaic.gov.au.

19. Employees of Dematec

- 19.1 Dematec reserves the right to charge the Client a fee equal to one (1) year of an employee's annual wages or salary (inclusive of overtime and allowances) in the event that an employee or former employee of Dematec is employed by the Client on a permanent basis within six (6) months of the date of Delivery.

20. Confidentiality

- 20.1 Each party agrees to treat all information (including any pricing) and ideas communicated to it by the other confidentially and agree not to divulge it to any third party, without the other party's written consent. The parties will not copy any such information supplied, and will either return it or destroy it (together with any copies thereof) on request of the other party.

21. Dispute Resolution

- 21.1 If the parties fail to solve the entire dispute or fail to reach agreement on any of the matters described above within twenty (20) days (or any other period agreed in writing) from the date of the Dispute Notice, either Dematec or the Client may commence court proceedings or arbitration proceedings to resolve the dispute.

22. Building and Construction Industry Security of Payments Act 2009

- 22.1 At Dematec's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Building and Construction Industry Security of Payments Act 2009 may apply.
- 22.2 Nothing in this Contract is intended to have the effect of contracting out of any applicable provisions of the Building and Construction Industry Security of Payments Act 2009 of South Australia, except to the extent permitted by the Act where applicable.

23. Service of Notices

- 23.1 Any written notice given under this Contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
 - (b) by leaving it at the address of the other party as stated in this Contract;
 - (c) by sending it by registered post to the address of the other party as stated in this Contract;

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- (d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;
 - (e) if sent by email to the other party's last known email address.
- 23.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

24. Trusts

- 24.1 If the Client at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust or as an agent for a trust ("Trust") then whether or not Dematec may have notice of the Trust, the Client covenants with Dematec as follows:
- (a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust, the trustees and the trust fund;
 - (b) the Client has full and complete power and authority under the Trust or from the Trustees of the Trust as the case may be to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust, the trustees and the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
 - (c) the Client will not during the term of the Contract without consent in writing of Dematec (Dematec will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
 - (i) the removal, replacement or retirement of the Client as trustee of the Trust;
 - (ii) any alteration to or variation of the terms of the Trust;
 - (iii) any advancement or distribution of capital of the Trust; or
 - (iv) any resettlement of the trust fund or trust property.

25. General

- 25.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable, that provision shall be severed from this Contract, and the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 25.2 These terms and conditions and any Contract to which they apply shall be governed by the laws of South Australia, and are subject to the jurisdiction of the courts in Adelaide, South Australia. These terms prevail over all terms and conditions of the Client (even if they form part of the Client's purchase order).
- 25.3 Dematec may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent provided the assignment does not cause detriment to the Client.
- 25.4 The Client cannot licence or assign without the written approval of Dematec.
- 25.5 Dematec may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of Dematec's sub-contractors without the authority of Dematec.
- 25.6 The Client agrees that Dematec may amend their general terms and conditions for subsequent future Contracts with the Client by disclosing such to the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for Dematec to provide Goods to the Client.
- 25.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargo, including but not limited to, any Government imposed border lockdowns (including, worldwide destination ports), etc., ("Force Majeure") or other event beyond the reasonable control of either party. This clause does not apply to a failure by the Client to make a payment to Dematec, once the parties agree that the Force Majeure event has ceased.
- 25.8 Both parties warrant that they have the power to enter this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.
- 25.9 This Contract and any subsequent hire agreement between Dematec and the Client, shall constitute as the entire agreement between Dematec and the Client, and the Client hereby acknowledges that no reliance is placed on any representation made by Dematec that is not embodied in this Contract.
- 25.10 The rights and obligations of the parties will not merge on completion of any transaction under this Contract, and they will survive the execution and Delivery of any assignment or other document entered, for the purpose of, implementing any transaction under this Contract.
- 25.11 If part or all of any term of this Contract is or becomes invalid, illegal or unenforceable, it shall be severed from this Contract and shall not affect the validity and enforceability of the remaining terms of this Contract.