

Days Machinery Centre Pty Ltd – Terms & Conditions of Trade

1.1	Definitions	incurred by DMC as a result of the Customer's failure to comply with this clause.	9.6	it shall be the Customer's responsibility to ensure their vehicle and its contents are insured adequately or at all. The Customer acknowledges and accepts that:	
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.	6.	Credit Card Information	(a) DMC can only provide its Services on a vehicle in its current state as supplied to DMC therefore DMC shall not accept any responsibility for the workmanship of any third party that has worked on a Customer's vehicle prior to Services being undertaken by DMC (including, but not limited to, paint work or repairs);	
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.	6.1	DMC will:	(b) DMC is only responsible for parts that are replaced by DMC and that in the event that other parts/materials, subsequently fail, the Customer agrees to indemnify DMC against any loss or damage to the Goods, or caused by the materials, or any part thereof howsoever arising;	
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 Customer does not wish to allow Cookies to operate in the background when using DMC's website, then the Customer 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.	6.2	The Customer expressly agrees that, if pursuant to this Contract, there are any unpaid charges or other amounts due and outstanding by the Customer, any equipment (or any part of them) supplied on hire that are lost or damaged or any other additional charges are due from the Customer which were not known at the time of the return of the equipment, DMC is entitled to immediately charge the Customer's nominated credit card for these amounts, and is irrevocably authorised to complete any documentation and take any action to recover from the credit card issuer any and all amounts which may be due by the Customer pursuant to the terms of this Contract.	(c) if during the course of the Services DMC identifies associated faults, DMC will communicate these faults to the Customer prior to continuing with the Services. Where the Customer chooses not to have the faults rectified DMC will not be held liable for any further damage caused; and	
1.5	"Customer" means the person/s, entities or any person acting on behalf of and with the authority of the Customer requesting DMC to provide the Services as specified in any proposal, quotation, order, invoice, or other documentation; and:	7.	Price and Payment	(d) where DMC has performed temporary repairs on the machinery that DMC: (i) offers no guarantee against the recurrence of the initial fault, or any further damage caused; and (ii) will immediately advise the Customer of the fault and shall provide the Customer with an estimate for the full repair of the vehicle.	
1.6	(a) if there is more than one Customer, is a reference to each Customer jointly and severally; and	7.1	At DMC's sole discretion, the Price shall be either:	10.	Access
1.7	(b) if the Customer is a partnership, it shall bind each partner jointly and severally; and		(a) as indicated on any invoice provided by DMC to the Customer upon placement of an order for Goods; or	10.1	The Customer shall ensure that DMC always has clear and free access to the vehicle/site to enable them to undertake the Services. Where DMC is instructed to carry out the Services on-site, DMC shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of DMC.
1.8	(c) if the Customer is on behalf of or part of, a Trust, shall be bound in its own capacity as a trustee; and	7.2	DMC reserves the right to change the Price:	11.	Compliance with Laws
1.9	(d) includes the Customer's executors, administrators, successors, and permitted assigns.		(a) if a variation to the Goods which are to be supplied is requested; or	11.1	The Customer and DMC shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Goods/Services.
2.	"DMC" means Days Machinery Centre Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Days Machinery Centre Pty Ltd.		(b) if a variation to the Services originally scheduled is requested; or	11.2	Modern Slavery
2.1	"Goods" means all Goods or Services supplied by DMC to the Customer at the Customer's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).		(c) where Services are requested outside normal working hours as per clause 2.9; or		For the purposes of this clause:
2.2	"GST" means Goods and Services Tax as defined within the 'A New Tax System (Goods and Services Tax) Act 1999' (Cth).		(d) where additional Services are required as a result of insufficient or incorrect information being supplied by the Customer or due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather conditions, limitations to accessing the site, availability of machinery, safety considerations, hidden faults, vehicle relocation etc) which are only discovered on commencement of the Services; or	11.3	(a) "Act" means the <i>Modern Slavery Act 2018 (cth)</i>
2.3	"Price" means the Price payable (plus any GST where applicable) for the Goods as agreed between DMC and the Customer in accordance with clause 7 below.		(e) in the event of increases to DMC in the cost of labour or materials (including, but not limited to, overseas transactions that may increase as a consequence of variations in foreign currency rates of exchange and/or international freight and insurance charges) which are beyond DMC's control.	11.4	(b) "Modern Slavery", "Modern Slavery Statement" and "Reporting Entity" have the meanings given by the Act.
2.4	Acceptance	7.3	Variances will be charged for on the basis of DMC's quotation, and will be detailed in writing, and shown as variations on DMC's invoice. The Customer shall be required to respond to any variation submitted by DMC within ten (10) working days. Failure to do so will entitle DMC 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.	11.5	If the Customer is a Reporting Entity, it shall comply with all of its obligations under the Act.
2.5	The parties acknowledge and agree that:	7.4	At DMC's sole discretion, a reasonable deposit may be required upon placement of an order for Goods, in accordance with any quotation provided by DMC or as notified to the Customer prior to the placement of an order for Goods.	11.6	Whether the Customer is a Reporting Entity or not, the Customer shall:
2.6	(a) they have read and understood the terms and conditions contained in this Contract; and		Where DMC is requested to store the Customer's Goods or vehicle, or where Goods or vehicle are not collected within twenty-four hours of advice to the Customer that they are ready for collection, then DMC (at its sole discretion) may charge a reasonable fee for storage.	11.7	(a) use reasonable endeavours to identify, assess and address risks of modern slavery practices in its operations and supply chains;
2.7	(b) the parties are taken to have exclusively accepted and are immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of the Goods.	7.5	Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by DMC, which may be:	11.8	(b) use its reasonable endeavours to ensure that the personnel responsible for managing the operations and supply chains used for the purposes of the Contract have undertaken suitable training to identify and report Modern Slavery;
2.8	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.	7.6	(a) on delivery of the Goods; or	12.	(c) use its reasonable endeavours to ensure that if at any time the Customer becomes aware of Modern Slavery practices in its operations and supply chains, the Customer must as soon as reasonably practicable take all reasonable steps to address or remove these practices;
2.9	Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.		(b) on completion of the Services; or	12.1	(d) provide to DMC a copy of any Modern Slavery Statement that it submits under the Act within seven (7) days of so doing; and
2.10	The Customer acknowledges that the supply of Goods on credit shall not take effect until the Customer has completed a credit application with DMC and it has been approved with a credit limit established for the account.	7.7	(c) the date specified on any invoice or other form as being the date for payment; or	12.2	(e) within seven (7) days of DMC's request (or such longer period as DMC agrees), provide to DMC any information or assistance reasonably requested by DMC;
2.11	In the event that the supply of Goods requested exceeds the Customer's credit limit and/or the account exceeds the payment terms, DMC reserves the right to refuse delivery.		(d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by DMC.	12.3	(i) concerning the Customer's compliance with the Act;
3.	All literature, samples, specifications, dimensions, and weights submitted with this quotation are approximate only and the data and descriptions contained in catalogues and other advertising material while being as accurate as possible may not necessarily be identical with the Goods and Services DMC supplies, and DMC reserves the right to supply Goods that have minor modifications in specifications as DMC sees fit.	7.8	Payment may be made by cash, electronic on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Customer and DMC.		(ii) concerning the Customer's operations and supply chains;
3.1	The descriptions, illustrations and performances contained in catalogues, other advertising material and price lists do not form part of the Contract of sale of the Goods unless otherwise agreed.	7.9	DMC may in its discretion allocate any payment received from the Customer towards any invoice that DMC determines and may do so at the time of receipt or at any time afterwards. On any default by the Customer DMC may re-allocate any payments previously received and allocated. In the absence of any payment allocation by DMC, payment will be deemed to be allocated in such manner as preserves the maximum value of DMC's Purchase Money Security Interest (as defined in the PPSA) in the Goods.		(iii) to enable DMC to prepare a Modern Slavery Statement or otherwise comply with the Act; or
3.2	If during the provisions of the Services it is discovered that the Services required shall exceed the original estimate and/or quoted cost and the Customer instructs DMC to cease all Services, then the Customer acknowledges and agrees to indemnify DMC for all costs incurred in reassembling the vehicle (including, but not limited to, any new Goods required (as some components when removed during the dismantling process often prove not to be reusable).	7.10	The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by DMC 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 Customer must notify DMC in writing within three (3) business days, the invoice shall remain due and payable for the full amount, until such time as DMC investigates the disputed claim, no credit shall be passed for refund until the review is completed. Failure to make payment may result in DMC placing the Customer's account into default and subject to default interest in accordance with clause 17.1.	12.4	(iv) to enable DMC to assess and address risks of Modern Slavery practices in its operations and supply chains.
3.3	In the event that DMC is required to provide the Services urgently, that may require DMC's staff to work outside normal business hours (including, but not limited to, working through lunch breaks, weekends and/or Public Holidays) then DMC reserves the right to charge the Customer additional labour costs (penalty rates will apply), unless otherwise agreed between DMC and the Customer.		Unless otherwise stated the Price does not include GST. In addition to the Price, the Customer must pay to DMC an amount equal to any GST DMC must pay for any supply by DMC under this or any other agreement for the sale of the Goods. The Customer must pay GST, without deduction or set-off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition, the Customer 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.	12.5	The parties agree that in the circumstances a breach arises pursuant to this clause or the terms of the Act, the parties will try and resolve the breach by way of remediation and DMC will be able to terminate the Contract for any breach by the Customer.
4.	These terms and conditions may be meant to be read in conjunction with DMC's Hire Form, and where the context so permits, the terms 'Goods' or 'Services' shall include any supply of Equipment, as defined therein.		Delivery ("Delivery") of the Goods is taken to occur at the time that:	12.6	The Customer warrants that any information supplied to DMC is true and accurate and may be relied upon for the purposes of the Act.
4.1	Electronic signatures shall be deemed to be accepted by either party provided that the parties have complied with Section 9 of the Electronic Transactions Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.	8.	(a) the Customer or the Customer's nominated carrier takes possession of the Goods at DMC's address; or	12.7	The Customer shall indemnify DMC against any loss or liability suffered by DMC as a result of the Customer's breach of this clause 11.
4.2	Authorised Representatives	8.1	(b) DMC (or DMC's nominated carrier) delivers the Goods to the Customer's nominated address even if the Customer is not present at the address.	12.8	Title
5.	Unless otherwise limited as per clause 3.2 the Customer agrees that should the Customer introduce any third party to DMC as the Customer's duly authorised representative, that once introduced that person shall have the full authority of the Customer to order any Goods, equipment or Services on the Customer's behalf and/or to request any variation to the Goods, equipment or Services on the Customer's behalf (such authority to continue until all requested Goods, equipment or Services have been completed or the Customer otherwise notifies DMC in writing that said person is no longer the Customer's duly authorised representative).	8.2	The cost of Delivery will be payable by the Customer in accordance with the quotation provided by DMC to the Customer, or as otherwise notified to the Customer prior to the placement of an order for Goods.	12.9	DMC and the Customer agree that ownership of the Goods shall not pass until:
5.1	In the event that the Customer's duly authorised representative as per clause 3.1 is to have only limited authority to act on the Customer's behalf, then the Customer must specifically and clearly advise DMC in writing of the parameters of the limited authority granted to their representative.	8.3	DMC may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.	13.	(a) the Customer has paid DMC all amounts owing to DMC; and
5.2	The Customer specifically acknowledges and accepts that they will be solely liable to DMC for all additional costs incurred by DMC (including DMC's profit margin) in providing any Goods, equipment or Services or variations requested by the Customer's duly authorised representative (subject always to the limitations imposed under clause 3.2 (if any)).	8.4	The Customer must take Delivery by receipt or collection of the Goods whenever they are tendered for Delivery.	13.1	(b) the Customer has met all of its other obligations to DMC.
5.3	Errors and Omissions	8.5	Any time specified by DMC for Delivery of the Goods is an estimate only and DMC will not be liable for any loss or damage incurred by the Customer 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 DMC is unable to supply the Goods as agreed solely due to any action or inaction of the Customer, then DMC shall be entitled to charge a reasonable fee for redelivery and/or storage.	13.2	Receipt by DMC 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.
5.4	The Customer acknowledges and accepts that DMC shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):	9.	Risk	13.3	It is further agreed that, until ownership of the Goods passes to the Customer in accordance with clause 12.1:
5.5	(a) resulting from an inadvertent mistake made by DMC in the formation and/or administration of this Contract; and/or	9.1	Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.		(a) the Customer is only a bailee of the Goods and must return the Goods to DMC on request;
5.6	(b) contained in/omitted from any literature (hard copy and/or electronic) supplied by DMC in respect of the Services.	9.2	If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Customer, DMC is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by DMC is sufficient evidence of DMC's rights to receive the insurance proceeds without the need for any person dealing with DMC to make further enquiries.		(b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for DMC and must pay to DMC the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
5.7	In circumstances where the Customer is required to place an order for Goods, in writing, or otherwise as permitted by these terms and conditions, the Customer is responsible for supplying correct order information such as, without limitation, the quantities, when placing an order for Goods (whether they are made to order Goods or not) "Customer Error" . The Customer must pay for all Goods it orders from DMC notwithstanding that such Goods suffer from a Customer Error and notwithstanding that the Customer has not taken or refuses to take Delivery of such Goods. DMC is entitled to, at its absolute discretion to waive its right under this sub-clause in relation to Customer Errors.	9.3	If the Customer requests DMC to leave Goods outside DMC's premises for collection or to deliver the Goods to an unattended location, then such Goods shall be left at the Customer's sole risk.		(c) the Customer 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 Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for DMC and must pay or deliver the proceeds to DMC on demand;
5.8	Change in Control	9.4	In the event that the Customer believes that DMC has damaged the vehicle during the installation process of the Goods or Services, the Customer shall within twenty-four (24) hours of Delivery (time being of the essence) notify DMC of any alleged defect or damage in accordance with 15.1. If the Customer fails to comply with clause 15.1 the vehicle shall be presumed to be free from any defect or damage.		(d) the Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of DMC and must sell, dispose of or return the resulting product to DMC as it so directs; the Customer irrevocably authorises DMC to enter any premises where DMC believes the Goods are kept and recover possession of the Goods;
5.9	The Customer shall give DMC not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or fax numbers, change of trustees, or business practice). The Customer shall be liable for any loss	9.5	The Customer accepts that the in the event that the vehicle is stored for any period on DMC's premises that it is done so at the Customer's own risk, and		(f) DMC may recover possession of any Goods in transit whether or not Delivery has occurred;
5.10					(g) the Customer 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 DMC; and
5.11					(h) DMC may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.
5.12				13.	Personal Property Securities Act 2009 ("PPSA")
5.13				13.1	In this clause financing statement, financing charge statement, security agreement, and security interest has the meaning given to it by the PPSA.
5.14				13.2	Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods that have previously been supplied and that will be supplied in the future by DMC to the Customer, and the proceeds from such Goods.
5.15				13.3	The Customer undertakes to:
5.16					(a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which DMC may reasonably require to:
5.17					(i) register a financing statement or financing charge statement in relation to a security interest on the Personal Property Securities Register;
5.18					(ii) register any other document required to be registered by the PPSA; or
5.19					(iii) correct a defect in a statement referred to in clause 13.3(a)(i) or 13.3(a)(ii);
5.20					(b) indemnify, and upon demand reimburse, DMC for all expenses incurred in registering or maintaining a financing statement or financing charge statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;

Please note that a larger print version of these terms and conditions is available from DMC on request.

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	(c)	not register a financing change statement in respect of a security interest before the prior written consent of DMC;	17.3	Further to any other rights or remedies DMC may have under this Contract, if a Customer has made payment to DMC, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by DMC under this clause 17 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this Contract.		(a)	a copy of the Personal Information about the Customer retained by DMC and the right to request that DMC correct any incorrect Personal Information; and
	(d)	not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods or the proceeds of such Goods in favour of a third party without the prior written consent of DMC;			19.10	(b)	that DMC does not disclose any Personal Information about the Customer for the purpose of direct marketing.
	(e)	immediately advise DMC of any material change in its business practices of selling the Goods which would result in a change in proceeds derived from such sales	17.4	Without prejudice to DMC's other remedies at law DMC shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all monies owing to DMC shall, whether or not due for payment, become immediately payable if:	19.11		DMC will destroy Personal Information upon the Customer'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.
13.4		DMC and the Customer agree that sections 96, 115 and 125 of the PSPA do not apply to the security agreement created by these terms and conditions. The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PSPA.		(a) any money payable to DMC becomes overdue, or in DMC's opinion the Customer will be unable to make a payment when it falls due;			The Customer can make a privacy complaint by contacting DMC via e-mail. DMC 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 Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Information Commissioner at www.oaic.gov.au.
13.5		The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PSPA.		(b) the Customer has exceeded any applicable credit limit provided by DMC;			
13.6		Unless otherwise agreed to in writing by DMC, the Customer waives their right to receive a verification statement in accordance with section 157 of the PSPA.		(c) the Customer 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	20.		Unpaid Seller's Rights
13.7		The Customer must unconditionally ratify any actions taken by DMC under clauses 13.3 to 13.5.		(d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.	20.1		Where the Customer has left any item with DMC for repair, modification, exchange or for DMC to perform any other service in relation to the item and DMC has not received or been tendered the whole of any monies owing to it by the Customer, DMC shall have, until all monies owing to DMC are paid:
13.8		Subject to any express provisions to the contrary (including those contained in this clause 13), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PSPA.	18.	Cancellation		(a)	a lien on the item; and
13.9			18.1	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.	20.2	(b)	the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.
14.		Security and Charge					The lien of DMC shall continue despite the commencement of proceedings, or judgment for any monies owing to DMC having been obtained against the Customer.
14.1		In consideration of DMC agreeing to supply the Goods and/or provide its Services, the Customer grants DMC a security interest by way of a floating charge (registerable by DMC pursuant to the PSPA) over all of its present and after acquired rights, title and interest (whether joint or several) in all other assets that is now owned by the Customer or owned by the Customer in the future, to the extent necessary to secure the repayment of monies owed under this Contract for provision of the Goods and/or Services under this Contract and/or permit DMC to appoint a receiver to the Customer in accordance with the Corporations Act 2001 (Cth).	18.2	If DMC, due to reasons beyond DMC's reasonable control, is unable to deliver any Goods and/or Services to the Customer, DMC 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 Customer. On giving such notice DMC shall repay to the Customer any money paid by the Customer for the Goods and/or Services. DMC shall not be liable for any loss or damage whatsoever arising from such cancellation.	21.		Service of Notices
14.2		The Customer indemnifies DMC from and against all DMC's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising DMC's rights under this clause.		The Customer 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 Customer cancels Delivery in accordance with this clause 18.3, the Customer will not be liable for the payment of any costs of DMC, except where a deposit is payable in accordance with clause 7.4. Failure by the Customer to otherwise accept Delivery of the Goods and/or Services shall place the Customer in breach of this Contract.	21.1		Any written notice given under this Contract shall be deemed to have been given and received:
14.3		In the event that the Customer defaults or breaches any term of this Contract and as a result, the security provided in clauses 12.1, 13.2 and 14.1 as applicable, is deemed insufficient by DMC to secure the repayment of monies owed by the Customer to DMC, the Customer hereby grants DMC a security interest as at the date of the default, by way of a charge, that enables the right and entitlement to lodge a caveat over any real property and/or land owned by the Customer and/or controlled by the Customer in the future, to secure the performance of the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money.	18.3			(a)	by handing the notice to the other party, in person;
15.		Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)		Cancellation of orders for Goods made to the Customer's specifications, or for non-stocklist items, will not be accepted once production has commenced, or an order has been placed.	21.2	(b)	by leaving it at the address of the other party as stated in this Contract;
15.1		The Customer must inspect the Goods on Delivery and must within seven (7) days of Delivery notify DMC in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Customer must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Customer must allow DMC to inspect the Goods.	18.4			(c)	by sending it by registered post to the address of the other party as stated in this Contract;
15.2		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).	19.	Privacy Policy		(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;
15.3		DMC acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.	19.1	All emails, documents, images, or other recorded information held or used by DMC is Personal Information, as defined and referred to in clause 19.4, and therefore considered Confidential Information. DMC 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"). DMC acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customer's Personal Information, held by DMC that may result in serious harm to the Customer, DMC will notify the Customer 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 Customer by written consent, unless subject to an operation of law.		(e)	if sent by email to the other party's last known email address.
15.4		Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, DMC makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. DMC's liability in respect of these warranties is limited to the fullest extent permitted by law.		Notwithstanding clause 19.1, privacy limitations will extend to DMC in respect of Cookies where the Customer utilises DMC's website to make enquiries. DMC 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 Customer's:	22.		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.
15.5		If the Customer is a consumer within the meaning of the CCA, DMC's liability is limited to the extent permitted by section 64A of Schedule 2.	19.2		22.1		Trusts
15.6		If DMC is required to replace the Goods under this clause or the CCA, but is unable to do so, DMC may refund any money the Customer has paid for the Goods.					If the Customer at any time upon or subsequent to entering into the Contract is acting in the capacity of trustee of any trust or as an agent for a trust ("Trust") then whether or not DMC may have notice of the Trust, the Customer covenants with DMC as follows:
15.7		If the Customer is not a consumer within the meaning of the CCA, DMC's liability for any defect or damage in the Goods is:				(a)	the Contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust, the trustees and the trust fund;
15.8		(a) limited to the value of any express warranty or warranty card provided to the Customer by DMC at DMC's sole discretion;			23.	(b)	the Customer 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 Customer against the Trust, the trustees and the trust fund. The Customer 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;
15.9		(b) limited to any warranty to which DMC is entitled, if DMC did not manufacture the Goods;			23.1	(c)	the Customer will not during the term of the Contract without consent in writing of DMC (DMC will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
15.10		(c) otherwise negated absolutely.				(i)	the removal, replacement or retirement of the Customer as trustee of the Trust;
15.11		Subject to this clause 15.8, returns will only be accepted provided that:				(ii)	any alteration to or variation of the terms of the Trust;
15.12		(a) the Customer has complied with the provisions of clause 15.1; and				(iii)	any advancement or distribution of capital of the Trust; or
15.13		(b) DMC has agreed that the Goods are defective; and			23.2	(iv)	any resettlement of the trust fund or trust property.
15.14		(c) the Goods are returned within a reasonable time at the Customer's cost (if that cost is not significant); and					General
15.15		(d) the Goods are returned in as close a condition to that in which they were delivered as is possible.	19.3	If the Customer consents to DMC's use of Cookies on DMC's website and later wishes to withdraw that consent, the Customer may manage and control DMC's privacy controls via the Customer's web browser, including removing Cookies by deleting them from the browser history when exiting the site.			Any dispute or difference arising as to the interpretation of these terms and conditions or as to any matter arising herein, shall be submitted to, and settled by, mediation before resorting to any external dispute resolution mechanisms (including arbitration or court proceedings) by notifying the other party in writing setting out the reason for the dispute. The parties shall share equally the mediator's fees. Should mediation fail to resolve the dispute, the parties shall be free to pursue other dispute resolution avenues. 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.
15.16		Notwithstanding clauses 15.1 to 15.8 but subject to the CCA, DMC shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:			23.3		These terms and conditions and any Contract to which they apply shall be governed by the laws of New South Wales and are subject to the jurisdiction of the Casino Courts in that state. These terms prevail over all terms and conditions of the Customer (even if they form part of the Customer's purchase order).
15.17		(a) the Customer failing to properly maintain or store any Goods;			23.4		DMC may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Customer's consent provided the assignment does not cause detriment to the Customer.
15.18		(b) the Customer using the Goods for any purpose other than that for which they were designed;	19.4		23.5		The Customer cannot licence or assign without the written approval of DMC. DMC 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 Customer agrees and understands that they have no authority to give any instruction to any of DMC's sub-contractors without the authority of DMC.
15.19		(c) the Customer continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;			23.6		
15.20		(d) the Customer failing to follow any instructions or guidelines provided by DMC;			23.7		The Customer agrees that DMC may amend their general terms and conditions for subsequent future Contracts with the Customer by disclosing such to the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for DMC to provide Goods to the Customer.
15.21		(e) fair wear and tear, any accident, or act of God.					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 Customer to make a payment to DMC, once the parties agree that the Force Majeure event has ceased.
16.		Intellectual Property	19.5	The Customer consents to DMC being given a consumer credit report to collect personal credit information relating to any overdue payment on commercial credit.			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.
16.1		Where DMC has designed, drawn or developed Goods for the Customer, then the copyright in any designs and drawings and documents shall remain the property of DMC. Under no circumstances may such designs, drawings and documents be used without the express written approval of DMC.	19.6	The Customer agrees that personal credit information provided may be used and retained by DMC for the following purposes (and for other agreed purposes or required by):	23.8		This Contract and any subsequent hire agreement between DMC and the Customer, shall constitute as the entire agreement between DMC and the Customer, and the Customer hereby acknowledges that no reliance is placed on any representation made by DMC that is not embodied in this Contract.
16.2		The Customer warrants that all designs, specifications, or instructions given to DMC will not cause DMC to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify DMC against any action taken by a third party against DMC in respect of any such infringement.		(a) the provision of Goods; and/or	23.9		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.
16.3		The Customer agrees that DMC may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which DMC has created for the Customer.	19.7	(b) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Goods; and/or	23.10		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.
17.		Default and Consequences of Default		(c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or	23.11		
17.1		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 DMC's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.		(d) enabling the collection of amounts outstanding in relation to the Goods.	23.12		
17.2		If the Customer owes DMC any money, the Customer shall indemnify DMC from and against all costs and disbursements:		DMC may give information about the Customer to a CRB for the following purposes:			
		(a) incurred; and/or		(a) to obtain a consumer credit report;			
		(b) which would be incurred and/or		(b) allow the CRB to create or maintain a credit information file about the Customer including credit history.			
		(c) for which by the Customer should be liable;	19.8	The information given to the CRB may include:			
		in regard to legal costs on a solicitor and own client basis incurred in exercising DMC's rights under these terms and conditions, internal administration fees, DMC'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.		(a) Personal Information as outlined in 19.4 above;			
				(b) name of the credit provider and that DMC is a current credit provider to the Customer;			
				(c) whether the credit provider is a licensee;			
				(d) type of consumer credit;			
				(e) details concerning the Customer'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 DMC 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 Customer no longer has any overdue accounts and DMC has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);			
				(g) information that, in the opinion of DMC, the Customer has committed a serious credit infringement;			
				(h) advice that the amount of the Customer's overdue payment is equal to or more than one hundred and fifty dollars (\$150).			
			19.9	The Customer shall have the right to request (by e-mail) from DMC:			

Please note that a larger print version of these terms and conditions is available from DMC on request.