

## Terms and Conditions of Sale for DECKTEC PTY LTD

These terms and conditions together with any Commercial Account Application Form, credit application, quotation or order (including online or web-based orders) to which these terms are attached or in which these terms are referred together make up a legally binding agreement (**the Agreement**) between: Decktec Pty Ltd (**Decktec**) AND the person(s) or company named in the attached or previously signed credit application, quotation or proposal (**the Purchaser**).

This Agreement may be accepted by doing either one or more of the following:

- (a) signing these terms and conditions of trade; or
- (b) signing the credit application, proposal or quotation issued by Decktec in which these terms and conditions were attached or referred to; or
- (c) issuing a purchase order or similar request for goods in response to the quotation or proposal referred to at (b) above.

THE PARTIES AGREE as follows:

### 1. Agreement to Buy and Sell

1. If the Purchaser is a corporation, the person signing these terms or the attached credit application, proposal or quotation or otherwise accepting this Agreement on behalf of the Purchaser hereby warrants to Decktec that: he/she has full and express authority to enter this Agreement on behalf of the Purchaser and to bind the Purchaser to the obligations of the Purchaser hereunder; and he/she has capacity to enter this Agreement.
2. The parties acknowledge that Decktec will sell and the Purchaser will purchase goods from time to time (**the supply**) pursuant to these terms and conditions (**the Agreement**). If any future contract or document between Decktec and the Purchaser is inconsistent with this Agreement, then this Agreement will apply unless the subsequent contract is signed by Decktec, refers to and specifically alters this Agreement in writing.
3. In the event any credit, account or facility is granted pursuant to the terms of this Agreement, Decktec may not state a limit, or may extend, increase or reduce such credit or facility by serving written notice. If a credit limit is set and then exceeded by Decktec, such excess will not be a breach of this Agreement by Decktec.
4. In the event that Decktec serves notice in accordance with **clause 1.3** then, apart from any extension, increase or reduction set out in the notice, this Agreement and any supporting guarantee will continue to operate in its amended form.
5. Should there be any variation to any of the information supplied by the Purchaser in its credit account application or in the structure of the Purchaser's business (such as a conversation to or from a company or trust or the appointment of new directors or change in shareholders), Decktec shall be notified in writing. Until a new credit application form is signed and approved in writing by Decktec, the original Purchaser will remain liable to Decktec as though all goods were supplied to the original Purchaser.

### 2. Placement of Orders and Variations

1. The Purchaser must order the supply or other goods from Decktec in writing, email or other electronic communication acceptable to Decktec (which includes without limitation purchase orders, the acceptance by the Purchaser of a quotation, proposal or variation prepared by Decktec) (**order/s**). Upon placement of order, the Purchaser will be bound to proceed with the purchase of the supply.
2. Decktec will not be bound by any terms or conditions expressed in orders or acceptances generated by the Purchaser except to the extent that such terms have been expressly agreed upon between the parties in writing and signed by Decktec. For the avoidance of doubt, even where the Purchaser attaches or refers to other terms and conditions in purchase orders or other requests for quotations or supply of goods, received after this Agreement has been entered into (**additional terms**), such additional terms are expressly excluded from this Agreement and will be of no force or effect against Decktec unless it expressly agrees otherwise (by notice in writing, signed by a director of Decktec).
3. Decktec may decline to accept any order without providing a reason in its absolute discretion.
4. If the Purchaser requests or Decktec deems there to be a variation in the scope of the supply, then Decktec may (but is not obliged to) notify the Purchaser in writing of the variation, the price variation, associated delays and any other information Decktec deems relevant.
5. Decktec is not obliged to commence any supply associated with any variation identified in accordance with **clause 2.4** unless and until the Purchaser acknowledges and accepts in writing the variations contained in that notice

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### 3. Delivery of Orders

1. The Purchaser acknowledges that goods delivered to a courier are outside Decktec's control and Decktec will not be liable for any loss, damage, delay or non-delivery of goods contributed to by a third party, to the extent permitted by law.
2. Deliveries shall be made during normal working hours and at the cost and risk of the Purchaser. In the event the Purchaser or the Purchaser's agent is not on site to accept the delivery, then the driver's signature denoting the time, date & place of delivery, shall be deemed to be acceptance of the said delivery by the Purchaser.
3. Subject always to the remaining provisions of this Agreement, where Decktec agrees to make delivery of goods or Equipment, Decktec's obligation to deliver the goods/Equipment will not extend beyond delivery immediately inside the boundary of the address details provided by the Purchaser.
4. Deliveries will be made at times nominated by Decktec. In the event that:
  - (a) the Purchaser or the Purchaser's agent is not on site to accept the delivery; or
  - (b) the delivery driver or courier, in their absolute discretion, deem the delivery site unsafe or inaccessible,then the driver or courier reserves the right to not make the delivery of the goods/Equipment until such time as the issues in relation to the site have been rectified and an alternative time or address for delivery is arranged with Decktec. In the meantime and notwithstanding whether the delivery costs were included in the price or fees payable by the Purchaser, the goods/Equipment will be taken back to Decktec's premises at the Purchaser's expense and any subsequent re-delivery will be at the Purchaser's expense.
5. If a delivery driver or courier enters the Purchaser's delivery site at the direction of the Purchaser or its personnel and becomes bogged or stuck, or otherwise causes damage then the Purchaser will be liable for the costs of recovering the delivery vehicle and for any damage caused to the vehicle and any other property or person.
6. If a date for delivery is nominated by the Purchaser, Decktec will not be bound to deliver the supply by that date unless it expressly agrees to do so in writing, signed by Decktec, in which case, it will be deemed to agree to use reasonable endeavours to deliver by the relevant date. Decktec shall be excused from any failure to deliver which is contributed to by causes beyond its reasonable control and the time specified for completion of delivery shall be extended commensurately. Delay in delivery or completion shall not constitute a breach of this Agreement, nor shall it affect any other provisions of this Agreement to Decktec's disadvantage.
7. If goods are to be collected from Decktec's premises and are not collected by the agreed collection date, then:
  - (a) Decktec will not be liable for any damaged caused to goods after that date; and
  - (b) Decktec may in its absolute discretion cancel the order and re-sell or hire the goods/Equipment to a third party and recover from the Purchaser the costs of doing so (including any damage sustained as a result of the re-sale, storage fees and legal costs on an indemnity basis) as a liquidated debt.
8. It is the responsibility of the Purchaser to carefully inspect the goods immediately after they are delivered or collected. Any claims with respect to damage or defect will only be considered if made in the first instance by phone within 7 days of receipt, and also in writing within 7 days of delivery.
9. Some orders will require a percentage of the order price to be paid up front by the Purchaser to Decktec, some or all of which may be non refundable. This will be notified to the Purchaser at the time the order is placed.
10. If the Purchaser seeks to return goods to Decktec for any reason other than in accordance with clause 3.8, the Purchaser must return the goods to Decktec within 21 calendar days of the date that the goods are delivered to the Purchaser and the Purchaser must comply with clauses 3.11 and 3.12.
11. Where goods are returned in accordance with clause 3.10, the Purchaser:
  - (a) must return the goods to Decktec at the Purchaser's sole cost and expense to the address nominated by Decktec; and
  - (b) will be liable for and indemnifies Decktec against any cost, expense, loss or claim that Decktec incurs or suffers in connection with receiving, repackaging and/or re-stocking the goods, and making good any damage or defect caused to the goods by the Purchaser, or any third party, in delivering the goods to Decktec in accordance with clause 3.11(a). The fees recoverable by Decktec from the Purchaser include (without limitation) the initial delivery costs incurred by Decktec in delivering the goods to the Purchaser, a fee of \$32.00 (ex GST) per item for any goods that require repackaging, and a fee of \$12.00 (ex GST) per item for any goods that required 3PL restocking as adjusted from time to time.

12. Decktec will not accept any attempted return of goods if the Purchaser fails to comply with this clause 3 and the Purchaser releases Decktec from any claim which it, or any third party, has or may have against Decktec in respect of the return of goods not in compliance with this clause 3.

#### 4. Payment and Price

1. All supplies are made at the price current at the time of delivery or completion. The price of the supply is EXW (Incoterms 2010) from Decktec's site (Suite 110b, 10-16 Kenrick Street, The Junction in the State of New South Wales) or as otherwise agreed in writing by Decktec. Costs and charges for freight and handling at the point of delivery to the Purchaser or the Purchaser's agent are payable by the Purchaser unless otherwise stated on the quote/order form. All quotes remain current for 14 days only from the date of quote but are not fixed. **NOTE pricing may vary from time to time subject to exchange rate variations and/or material increases outside the control of Decktec.**
2. The Purchaser must pay to Decktec the price in relation to each supply as set out in the corresponding tax invoice. Terms are strictly 30 days from the date of each tax invoice unless otherwise agreed in writing between the parties.
3. Decktec may withdraw credit facilities to the Purchaser at any time without notice. Without limiting Decktec's rights to withdraw credit, Decktec reserves the right to stop & place the account and any supply on hold until the account is returned to the agreed trading terms, and Decktec agrees to recommence supply.
4. The Purchaser agrees to pay to Decktec an account service fee of 10 per cent per annum in relation to any invoices which are not paid strictly in terms of this Agreement, calculated daily and compounding monthly. The Purchaser acknowledges this service fee is a genuine pre estimate of the additional cost and damage suffered by Decktec in the event of a failure by the Purchaser to adhere strictly to the terms of this Agreement.
5. The Purchaser agrees that Decktec may deduct or offset any amount the Purchaser owes to Decktec, from funds which are received from the Purchaser and held by Decktec.

#### 5. Building and Construction Industry Security of Payment Act

- 5.1. For the purposes of the *Building and Construction Industry Security of Payments Acts* (or equivalent acts) existing or enforceable from time to time in each State or territory in Australia:
  - (a) every date on which good are supplied shall be deemed a reference date, and Decktec shall be entitled to issue payment claims accordingly; and
  - (b) it shall be sufficient service of a payment claim if it is posted to the Purchaser's postal address as nominated on any credit application or other document provided to Decktec or to any other postal address nominated by the Purchaser to Decktec from time to time.

#### 6. Passing of Title and Risk

- 6.1. Decktec reserves the following rights in relation to all goods forming part of the supply until all outstanding amounts owed by the Purchaser to Decktec are paid in full:
  - (a) title of all goods; and
  - (b) entry into the Purchaser's premises (or the premises of any associated company or agent where goods are located) without liability for trespass or any resulting damage to retake possession of the goods; and
  - (c) to keep or resell any goods repossessed pursuant to **clause 6.1(b)**.
- 6.2. If the Purchaser:
  - (a) resells the goods; or
  - (b) sells products manufactured using the goods; thenthe Purchaser must hold an amount of the proceeds of the sale reflective of the invoice price of the goods sold or used in the manufacture of the goods sold in a separate identifiable account as the beneficial property of Decktec. The Purchaser must pay such amount to Decktec upon request.
- 6.3. Notwithstanding **clauses 6.1 and 6.2**, Decktec may take action against the Purchaser for the purchase price and all risk regarding the goods will pass to the Purchaser upon delivery.
- 6.4. In the event that the Purchaser is in default of this Agreement or in the event that an administrator, liquidator or trustee in bankruptcy is appointed to the Purchaser Purchaser will appoint Decktec as the Purchaser's attorney to secure performance of the Purchaser's obligations under this Agreement.
- 6.5. Risk in all goods forming part of the supply will pass to purchaser on delivery.

#### 7. Security and PPSA

- 7.1. For the purposes of this clause, "PPSA" means the Personal Property Securities Act 2009 (Cth) as amended from time to time. Where a particular section or term from the PPSA is used in this

Agreement, it is deemed to be that section or term as amended, renumbered or replaced from time to time.

- 7.2. To the extent permitted by law, and for better securing payment all payments under this Agreement plus any costs or charges, the Purchaser hereby charges all of its real and personal present and after-acquired property in favour of Decktec.
- 7.3. The Purchaser acknowledges and agrees that this Agreement constitutes a security agreement in relation to Decktec's security interest in all present and after-acquired goods in accordance with the PPSA. The Purchaser agrees to grant a "Purchase Money Security Interest" to Decktec.
- 7.4. The Purchaser also acknowledges and agrees that the PPSA applies to Decktec's separate security interests set out in **clause 6 and 7.2**.
- 7.5. To the extent permitted by law, the following provisions of the PPSA do not apply, and for the purposes of section 115 of the PPSA are contracted out of this Agreement:
  - (a) sections 95 (notice of removal of accession), to the extent that it requires Decktec to give a notice to the Purchaser, 96 (retain of accession) and 125 (obligation to dispose of or retain collateral);
  - (b) section 130 (notice of disposal), to the extent that it requires Decktec to give a notice to the Purchaser;
  - (c) section 132(3)(d) (contents of statement of account after disposal);
  - (d) section 132(4) (statement of account if no disposal);
  - (e) section 135 (notice of retention);
  - (f) section 142 (redemption of collateral);
  - (g) section 143 (reinstatement of security agreement).
- 7.6. For the purposes of section 14(6) of the PPSA, the Purchaser (and Decktec) agree that any payments received from the Purchaser pursuant to or in any way connected with this Agreement, will be applied in the following order of priority:
  - (a) Firstly, if there are any debts or obligations outstanding to Decktec which are not secured by clause 6 or this clause 7, then to those debts or obligations, in the order they arose;
  - (b) Secondly, if there are debts or obligations outstanding to Decktec which are secured, but are not classified as purchase money security interests (for the purposes of the PPSA), then to those debts or obligations, in the order they arose or were incurred; and
  - (c) Lastly, to any obligations or debts to Decktec secured by purchase money security interests (as defined by the PPSA).
- 7.7. The Purchaser consents to:
  - (a) and agrees to execute any other document or instrument required to give effect to the security interests created by this Agreement; and
  - (b) the registration with the relevant authority or public register of any security interest created by this Agreement or any other document required to give effect to a security interest created by this Agreement, including without limitation the registration of a financing statement or financing change statement on the Personal Property Securities Register.
- 7.8. The Purchaser must pay all costs of and incidental to the preparation, execution and registration of any instrument which is executed for the purposes of giving effect to this clause and must also pay all costs incidental to the withdrawal, discharge or release of such instrument.

#### 8. Warranties and Liability

- 8.1. To the extent permitted by law and unless otherwise expressly agreed, Decktec does not provide and expressly excludes all warranties in respect of any goods supplied.
- 8.2. The Purchaser acknowledges and agrees that to the extent permitted by law, Decktec will not be liable for, and the Purchaser releases Decktec in respect of, any claim, loss, cost, damage or expense (**Claim**) arising out of any act or omission of Decktec or its employees, officers or agents unless that Claim is a direct result of the negligence or breach of this Agreement or a warranty by Decktec.
- 8.3. The parties agree that any liability for a Claim against Decktec that cannot be excluded will be limited to the lesser of:
  - (a) the re-supply of the goods in question (if applicable);
  - (b) the cost of the re-supply of the goods in question (if applicable); or
  - (c) the contract price of the original supply of the goods.
- 8.4. Notwithstanding any of the above, the parties agree that Decktec will under no circumstances be liable to the Purchaser for any indirect or consequential loss, loss of income, profit or opportunity or for any contingent, consequential direct/indirect special, or punitive damages.
- 8.5. Decktec's liability/obligations to honour any claim under this Agreement do not extend to rectification of defects which are caused or contributed to by use or operation of any part of the supply otherwise than in accordance with guidelines or

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specifications supplied by Decktec, or under normal working conditions. Decktec will also not be liable for defects arising out of or in connection with the misuse, neglect, or wilful destruction of any part of the supply or to any damage caused to the supply as a result of continued use of any part of the supply after a defect has been detected or ought to have been detected.

- 8.6. Decktec will use reasonable endeavours to transfer warranties given by third party manufacturers to the extent they relate to goods provided as part of the supply and to the extent those warranties are transferrable. However, Decktec will not be liable for negotiating with manufacturers on behalf of the Purchaser and will not be liable to provide warranties to the Purchaser in addition to those provided by the manufacturer and transferred under this clause.
- 8.7. Notwithstanding any other provisions of the Agreement, any express warranties given by Decktec are given pursuant to the advertised terms and conditions of those warranties.

#### 9. Term and Amendment

- 9.1. Once the Purchaser's credit application is approved by Decktec, this Agreement will commence and will have effect on and from the date the credit application was made and will expire upon reasonable notice being given by one party to the other or in accordance with **clause 9.2**.
- 9.2. Without limiting any other rights of Decktec, Decktec may terminate the Agreement without notice if the Purchaser is in default under this Agreement in any way or commits an act of insolvency and an external administrator or controller, liquidator or trustee in bankruptcy is appointed to the Purchaser.
- 9.3. Decktec may assign or otherwise transfer any of its rights under this Agreement.
- 9.4. The Purchaser may not without the prior written consent of Decktec assign or otherwise transfer any of its rights or obligations under this Agreement.
- 9.5. Decktec reserves the right to amend this Agreement, provided such amendments are conveyed to the Purchaser in writing. The Purchaser further acknowledges that such writing will be by ordinary mail to the address set out in the original credit application, proposal or quotation, unless the Purchaser advises in writing to Decktec a new address, and this new address is acknowledged by return in writing by Decktec. Any amendments will be deemed to be accepted upon placement of a further order with Decktec after notice of the amendment, or 28 days, from notice, whichever occurs first.

#### 10. Defaults and Rights

- 10.1. In the event of a default under this Agreement by the Purchaser, the whole of any outstanding balance will become immediately due and payable by the Purchaser to Decktec together with all legal costs and expenses associated with recovery of the outstanding balance on an indemnity basis.
- 10.2. The certificate of a director or the credit manager of Decktec will, in the absence of evidence to the contrary, be conclusive as to the amount of the outstanding balance.
- 10.3. No failure or delay of Decktec to exercise any right or obligation of the Purchaser of any obligation hereunder and no custom or practice of the parties which is at variance with the terms of this Agreement and no waiver by Decktec of any particular default by the Purchaser shall affect or prejudice Decktec's rights in respect of any subsequent default and no indulgence or forbearance by Decktec of its rights under this Agreement shall adversely affect or prejudice its rights in relation to such default or any subsequent default.

#### 11. Applicable Law

- 11.1. The parties expressly agree that this Agreement will be governed by and interpreted in accordance with the laws of New South Wales and the parties submit to the jurisdiction of the courts of New South Wales.

#### 12. Purchaser's Warranties

- 12.1. The Purchaser (and each director and office bearer if the Purchaser is a company) separately warrants that:
- in the case of a natural person, he/she has never been a bankrupt or entered into a deed of arrangement or compromise or any other arrangement under Part X of the *Bankruptcy Act* or otherwise assigned his/her assets for the benefit of creditors.
  - it has never been under external administration or subject to the appointment of an external receiver or controller or entered into a deed of company arrangement and that it is solvent and able to pay its debts as and when they fall due.
  - they are not executing this Agreement as a result of or by reason of or in reliance upon any promise, representation, statement or information of any kind whatever given or offered

to them by or on behalf of Decktec whether in answer to an enquiry or otherwise.

- (d) prior to the placement of any order, they have made their own independent enquiries and satisfied themselves as to the quality and fitness for purpose of the goods and, to the extent permitted by law, Decktec makes no warranty, promise or representation in relation to the goods, either expressly or impliedly and any warranties, terms and conditions in relation to the state, quality or fitness of the goods for any purpose, whether implied by use, statute or otherwise is, to the extent permitted by law, hereby excluded.
- 12.2. In entering into this Agreement, Decktec relies upon the warranties provided above and upon any information supplied by the Purchaser in an accompanying credit account application.
- 12.3. Decktec relies upon the representation that the person signing this Agreement has authority to execute it on behalf of the Purchaser described in the Schedule.

#### 13. Personal Information

- 13.1. The Purchaser consents to Decktec from time to time, seeking, advising, exchanging and verifying any personal or commercial information of the Purchaser with any third party and to carrying out any further pertinent investigation about the Purchaser's contact/address details, credit arrangements, trading terms, credit worthiness, credit standing, credit history or credit capacity, financial status etc.

#### 14. Goods and Services Tax (GST)

- 14.1. GST will be charged to all relevant goods and services and will be payable by the Purchaser at the time of payment, including but not limited to all stock, services, costs, fees, freight charges and any other amounts that become payable by operation of this Agreement.

#### 15. Credit Limit

- 15.1. Notwithstanding any other provision in these terms, Decktec may grant credit to the Purchaser under these terms either unconditionally or with any condition it sees fit, including, without limitation, a cap on the amount of credit Decktec is prepared to extend to the Purchaser. Decktec may increase or decrease any such cap as it sees fit from time to time throughout the duration of these terms by notice to the Purchaser in writing.
- 15.2. If a credit limit is set and then exceeded by Decktec, such excess will not be a breach of this Agreement by Decktec.
- 15.3. In the event that Decktec serves notice in accordance with **clause 15.1** then, apart from any extension, increase or reduction set out in the notice, this Agreement and any supporting guarantee will continue to operate in its amended form.
- 15.4. Should Decktec decide to extend beyond the credit cap in place from time to time, then the cap will in no way act to limit the ability or right of Decktec to recover any monies owing to it nor will such cap act to limit the liability of the Purchaser to pay those monies to Decktec.

#### 16. Notices

- 16.1. Any notices, demands, consents or other communications under this Agreement shall be in writing signed by the party or the party's solicitor and sent by pre-paid post, facsimile, electronic mail or by hand to the address for the party detailed in this Agreement or otherwise as notified by one party to the other party from time to time and will be deemed to be duly served:
- if in person, at the time of delivery;
  - if by post, within Australia to an Australian address 2 business days after posting and in any other case 10 business days after posting by airmail;
  - if by facsimile, the date and time the sender's facsimile machine produces a confirmation of transmission; or
  - if by electronic mail, the date and time depicted on the sender's email account sent item.

#### 17. General

- 17.1. This Agreement contains the entire agreement between the parties as at the date of the Agreement with respect to its subject matter and supersedes all prior agreements and understandings between all parties in connection with it.
- 17.2. Nothing in this Agreement will be deemed to constitute a partnership, joint venture, agency or other form of fiduciary relationship between Decktec and the Purchaser and neither Decktec nor the Purchaser has the power to bind the other except as expressly authorised by this Agreement.
- 17.3. If any provision of this Agreement is held to be unlawful, invalid, unenforceable or in conflict with any rule of law, statute, ordinance or regulation, it is to be severed so that the validity and enforceability of the remaining provisions are not affected.
- 17.4. Decktec may assign or otherwise transfer any of its rights under this Agreement. The Purchaser may not without the prior written

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consent of Decktec assign or otherwise transfer any of its rights or obligations under this Agreement.

17.5. No failure or delay of Decktec to exercise any right or obligation and no custom or practice of the parties which is at variance with the terms of this Agreement and no waiver by Decktec of any particular default by the Purchaser shall affect or prejudice

Decktec's rights in respect of any subsequent default and no indulgence or forbearance by Decktec of its rights under this Agreement shall adversely affect or prejudice its rights in relation to such default or any subsequent default.