

1.1 Terms and Conditions

1.1.1 Export Laws and Regulations

^CustomerName^ acknowledges that Dematic is required to comply with applicable export laws and regulations relating to the sale, exportation, transfer, assignment, disposal, and usage of the work/equipment/services provided under the Contract, including any export license requirements. ^CustomerName^ agrees that such work/equipment/services shall not at any time directly or indirectly be used, exported, sold, transferred, assigned, or otherwise disposed of in a manner which will result in non-compliance with such applicable export laws and regulations. It shall be a condition of the continuing performance by Dematic of its obligations hereunder that compliance with such export laws and regulations be maintained at all times.

^CustomerName^ agrees to indemnify and hold Dematic harmless from any and all costs, liabilities, penalties, sanctions, and fines related to non-compliance with applicable export laws and regulations.

1.1.2 Commercial Terms

Table 1 Commercial Terms

1.	<ul style="list-style-type: none">• This Proposal is based on Dematic's General Terms and Conditions - Exhibit A and Software License and Services Terms (SLS). Dematic's price is based on Dematic's standard practices, equipment, Terms and Conditions, and Warranty.• Acceptance of this Proposal or the commencement of performance of services by Dematic, shall constitute acceptance by ^CustomerName^ of the Dematic General Terms and Conditions – Exhibit A, and the Software License and Services Terms (SLS); any additional or differing terms and conditions set forth in any communication from ^CustomerName^ shall not be effective or binding unless assented to in writing by an authorized representative of Dematic.
2.	Except as modified by this Proposal, the Terms and Conditions governing the work will be those outlined in the Master Material Handling Agreement dated xx/xx/xx (as amended xx/xx/xx) between ^CustomerName^ and Dematic Corp. which is herein incorporated by this reference, hereto attached as Exhibit A and the Software License and Services Terms (SLS).

Insert the negotiated Terms and Conditions for Customers such as K-Mart, Wal-Mart, Sears, Walgreens, Lowe's, Exel, St.Onge, and Dematic Distributors, here.

- Also, if software is included in this Proposal **and this Proposal has negotiated terms**, Sales **must** check with Legal regarding text to add to the negotiated terms, explaining and adding the Software License and Services Terms (SLS).

1.1.3 General Terms and Conditions – Exhibit A

The Dematic Corp. (“Dematic”) Proposal and Sales or Service Agreement (collectively, the “Proposal”) specifically incorporate the following General Terms and Conditions. If Dematic provides software and/or software-related professional services, the Software License and Services Terms attached hereto and incorporated herein (the “SLS Terms”) also shall apply. Collectively the Proposal, these General Terms and Conditions, and the SLS Terms are referred to herein as the “Agreement” between Dematic and Purchaser.

1. **TAXES:** Unless otherwise indicated, the price does not include any sales, use, excise, or similar taxes, and Purchaser shall be responsible for all such taxes, whether or not invoiced by Dematic. If taxes are included as part of the price and the rate or base of the tax is increased or decreased, Purchaser will pay any increased taxes, and Dematic will give credit for any tax decrease. Absent written agreement to the contrary, Dematic will pay the tax and be reimbursed by Purchaser. In the event Purchaser is exempt from such taxes or should Purchaser elect to pay such taxes directly to the taxing authority, then Purchaser will provide Dematic with a valid tax exemption certificate or similar document satisfactory in form to Dematic.
2. **WARRANTY FOR GOODS AND SERVICES**
 - a. Dematic warrants (the “Goods Warranty”) that the Goods as set forth in the Proposal will be, on the date of the start of the Warranty Period, free from defects in material and workmanship.
 - b. Dematic warrants (the “Services Warranty”) that the Services (as defined below) will be performed in a professional and workmanlike manner. “Services” for purposes of this Section 2 means the installation and commissioning services as set forth in the Proposal.
 - c. Any failure of the Goods to conform to the Goods Warranty, or the Services to conform to the Services Warranty, is referred to herein as a “Warranty Defect”.
 - d. Dematic’s obligations under the Goods Warranty and the Services Warranty are conditioned upon receipt by Dematic of prompt written notice of the claimed Warranty Defect, including a description of the Warranty Defect and its discovery, and the opportunity for Dematic to inspect in Purchaser’s facility the Goods or Services claimed to be defective.
 - e. The Goods Warranty and the Services Warranty shall terminate, and any claim of a Warranty Defect shall be deemed waived, upon the expiration of the Warranty Period (as defined below), except as to any Warranty Defect for which Purchaser has given Dematic written notice in accordance with Section 2.d prior to the expiration of the Warranty Period.
 - f. The “Warranty Period” is the earliest of: (i) one year from completion of installation, (ii) one year from Acceptance, (iii) one year from commencement of beneficial use, or (iv) two thousand hours of operation; provided that, where no Services are included in the Proposal or sale, the Warranty Period is one year from shipment of the Goods.
 - g. In the event of a Warranty Defect for which Purchaser has timely and properly given notice pursuant to Section 2.d, Dematic shall be responsible, (i) in the case of Goods, to repair or replace the defective Goods, delivered F.O.B. Dematic’s manufacturing plant, and (ii) in the case of Services, to re-perform the Services that were not performed in accordance with the Services Warranty. The warranty obligation does not include costs of labor or other charges incurred in removing or reinstalling parts; and does not apply to Goods damaged by overloading, exposure to corrosive or abrasive substances or abnormal dampness, misuse, abuse, neglect or accident, or to Goods which have been improperly applied, installed, adjusted, operated, maintained, repaired, modified, changed or altered by persons other than Dematic, or to parts subject to wear and tear and replacement in ordinary course (such as, but not limited to: belts, chains, fuses, light bulbs, bushings, or similar items), or to other ordinary wear and tear. Dematic’s Goods Warranty with respect to any repaired or replaced Goods, or Services Warranty with respect to any re-performed Services, shall terminate on the date that the warranty would terminate under Section 2.e and 2.f as to any Goods or Services not subject to a claim of a Warranty Defect.
 - h. Dematic makes no warranties or representations, nor assumes any obligations with regard to, Purchaser’s existing equipment or for any equipment supplied by Purchaser or a third-party contracted by Purchaser and used in the Dematic system, and Purchaser assumes full responsibility for the use and operation of such equipment.
 - i. If Dematic fails to repair or replace within a reasonable time defective Goods for which Purchaser has timely and properly given notice of a Warranty Defect pursuant to Section 2.d, then provided that Purchaser has given Dematic ten (10) days

prior written notice after such failure to repair or replace, and Dematic has not made such repair or replacement within such ten (10) day notice period, Purchaser may obtain repair or replacement of the defective goods from a third-party, and in such event Dematic shall be liable to Purchaser for the lesser of (i) the reasonable costs of such repair or replacement by a third-party or (ii) that part of the purchase price of the defective part of the Goods that has already been paid by Purchaser.

- j. **DEMATIC MAKES NO WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE GOODS OR SERVICES OTHER THAN THE EXPRESS WARRANTIES CONTAINED IN SECTION 2. DEMATIC HEREBY EXPRESSLY DISCLAIMS ANY AND ALL OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY REPRESENTATION OR WARRANTY AS TO MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**
- k. If Dematic provides Software, Custom Software or Professional Services (as defined in the SLS Terms) under this Agreement, the applicable warranty terms and the Warranty Period therefor shall be as set forth in the SLS Terms.
3. **INSURANCE BY DEMATIC:** Dematic will maintain insurance covering its operations as follows:
- Worker's Compensation Insurance as required by the state having jurisdiction over Dematic and Employer's Liability with limit of \$1,000,000.
 - Commercial General Liability Insurance with combined single limit for bodily injuries and property damage of \$1,000,000.
 - Automotive Liability Insurance for bodily injuries, including death and property damage with combined single limit of \$1,000,000.
- Dematic may, at its sole option, satisfy these requirements with commercial insurance or through a program of combined self-insurance, self-insured retention, and excess insurance. Certificates of insurance will be furnished upon request.
4. **INSURANCE BY PURCHASER:** Purchaser assumes all risk of loss from damage and destruction of the Goods and any applicable installation charges thereof. Such risk of loss will transfer to Purchaser at the F.O.B. point pursuant to the shipping terms of the Agreement, or if not specified, F.O.B. Origin. Purchaser agrees to acquire and maintain all risk insurance covering damage and destruction of the Goods at replacement value and in no event less than the purchase price including any increases by Change Order(s). The insurance policy or policies shall name Dematic Corp. as an additional insured, shall provide for twenty (20) days prior notification to Dematic if the insurance coverage is terminated, reduced, or otherwise materially modified, shall provide that the insurance proceeds shall be payable to Dematic and Purchaser as their interests may appear, and shall provide for a waiver of subrogation in favor of Dematic. Payments made by an insurance carrier to Dematic as a result of such damage or destruction of the Goods will be applied against the purchase price and any other amounts owed by Purchaser under the Agreement. Purchaser shall furnish Dematic with certificates evidencing such insurance.
5. **INDEMNIFICATION:** The Goods furnished hereunder will be manufactured with Dematic safety features and furnished with user safety instructions. The operation of the Goods with safety features removed or modified and/or the disregard of the user safety instructions is outside of Dematic's control and is the responsibility of Purchaser. Therefore, Purchaser agrees to indemnify and hold Dematic harmless from any and all claims, demands, liabilities, causes of action, suits, costs, and expenses of any kind or nature (including attorney's fees) for loss or damage which may be suffered by Dematic as a result of injury to persons arising from such removal or modification to Dematic-furnished safety features and/or the disregard of Dematic-furnished user safety instructions, including any person injured while riding, sitting, stepping, walking, or climbing on the Goods furnished hereunder.
6. **CHANGE ORDER:** The parties may agree at any time prior to final payment of the Agreement to make additions, deletions, or other revisions by Change Order or Work Order (as defined below) without invalidating the Agreement. No such change will be performed by Dematic until an approved Change Order or Work Order is executed as provided below.
- When the price, schedule and other conditions relating to the change can be determined prior to the start of work under the change, a document describing this change ("Change Order") will be issued for execution by the parties.
 - When the change requires immediate action and the issuance of an executed Change Order with firm price would unreasonably delay the change, Purchaser shall place its signature upon a document authorizing Dematic to proceed with the change ("Work Order"). After the change under the Work Order has been completed, Dematic will calculate the firm price for the change using actual costs (including overhead and reasonable profit) current at time of performance of the work. Completed Work Order(s) will be incorporated into a Change Order for execution by the parties. Unless expressly modified by a Change Order or Work Order, the provisions of the Agreement and these General Terms and Conditions will govern all work performed under such Change Order or Work Order.
7. **LIENS:** Dematic will protect Purchaser as to any lien asserted against Purchaser's property for work, material or services furnished by others at Dematic's request when Purchaser makes the payments provided for in the Agreement.

8. REMEDIES:

- a. **Purchaser's Remedies Prior to Acceptance.** Prior to Acceptance, if Dematic defaults in the performance of any of its material obligations under the Agreement, Dematic shall have ten (10) days following written notice from Purchaser advising Dematic of the default, in which to (i) cure the default or, (ii) if the default is not reasonably curable within such ten (10) day period, to implement a plan to cure the default in a diligent manner. If Dematic fails to effect such cure within such ten (10) day period, or fails to implement a plan to cure the default within such ten (10) day period and thereafter prosecute such cure diligently to completion, then Purchaser shall have the right to terminate the Agreement upon written notice to Dematic. In the event of such termination, Purchaser may (i) pay to Dematic the reasonable value of Goods and Services already provided to Purchaser, or (ii) complete the work specified in the Agreement. If Purchaser elects to complete the work specified in the Agreement and the reasonable costs of completion exceed the unpaid balance of the Agreement price, Dematic shall pay the difference to Purchaser. If Purchaser elects to complete the work specified in the Agreement and the unpaid balance of the purchase price exceeds the reasonable cost of completion, Purchaser shall pay the difference to Dematic.
- b. **Purchaser's Remedies After Acceptance.** After Acceptance, Purchaser's remedies set forth in Section 2.g (with respect to Warranty Defects), and Section 11 (with respect to delay in delivery), are Purchaser's sole and exclusive remedies for any claim that Purchaser may have related to the Agreement or the Goods or Services, in connection with the design, manufacture, sale, handling, transportation, delivery, installation, performance or otherwise of the Goods or the Services.
- c. **Dematic's Remedies:** If Purchaser fails to pay the purchase price, or any installment thereof, within ten (10) days after it is due, or defaults in the performance of any of its other obligations under the Agreement and such default continues for ten (10) days after Dematic gives Purchaser written notice thereof, Dematic shall have the right to (i) suspend performance of its obligations under the Agreement until the default is cured, (ii) terminate the Agreement, and/or (iii) exercise any other right or remedy provided for in the Agreement, or available to Dematic under applicable law.
- d. **Termination for Convenience.** In the event that Purchaser cancels or terminates the Agreement for its convenience, a mutually satisfactory settlement shall be made with respect to the work performed by Dematic up to the date of termination, but if the parties fail to agree on the amount of the settlement, Dematic shall be entitled to recover payment from Purchaser for reasonable and necessary costs and expenses incurred in connection with Dematic's performance under this Agreement up to the date of termination (not already paid for by Purchaser) including but not limited to: proposal and conceiving activities; all materials, supplies and equipment delivered to the site; reasonable administrative and settlement activities for claims and discharge of liabilities; payment of claims arising out of the termination of work under subcontracts or purchase orders; restocking fees; storage or protection of property in which Purchaser has or may acquire an interest; demobilization; disposition of residual material, plant and equipment; additional work performed at Purchaser's request after termination; overhead and profit on the work performed by Dematic; commissions; and other reasonable and necessary costs and expenses incurred by Dematic resulting from Purchaser's termination for convenience.
- e. **LIMITATION OF REMEDIES. THE AGREEMENT SETS FORTH PURCHASER'S SOLE AND EXCLUSIVE REMEDIES FOR ANY DEFECT IN OR NON-CONFORMITY OF ANY GOODS OR SERVICES, FOR ANY NEGLIGENT DESIGN, MANUFACTURE, OR INSTALLATION OF THE GOODS, FOR ANY DELAY IN DELIVERY, AND FOR ANY BREACH OF THE AGREEMENT BY DEMATIC. IN NO EVENT SHALL DEMATIC BE LIABLE FOR LOSS OF USE, REVENUE OR PROFIT, OR FOR COST OF CAPITAL OR OF SUBSTITUTE USE OR PERFORMANCE, LOSS OF PRODUCTION, LOSS OF DATA, LOSS OF BUSINESS, OR FOR INDIRECT, SPECIAL, LIQUIDATED, INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR FOR ANY OTHER LOSS OR COST OF A SIMILAR TYPE. DEMATIC'S MAXIMUM CUMULATIVE LIABILITY UNDER THE AGREEMENT FOR ANY AND ALL CLAIMS, DAMAGES, LOSSES, LIABILITIES OR THE LIKE OF ANY KIND SHALL NOT EXCEED THE CONTRACT PRICE UNDER THE AGREEMENT. PURCHASER AND DEMATIC AGREE THAT THE EXCLUSIONS AND LIMITATIONS SET FORTH IN THIS PARAGRAPH ARE SEPARATE AND INDEPENDENT FROM ANY REMEDIES WHICH PURCHASER MAY HAVE IN THE AGREEMENT AND SHALL BE GIVEN FULL FORCE AND EFFECT WHETHER OR NOT ANY OR ALL SUCH REMEDIES SHALL BE DEEMED TO HAVE FAILED OF THEIR ESSENTIAL PURPOSE.**

9. **SECURITY INTEREST:** Purchaser hereby grants Dematic a security interest in the Goods to secure any and all obligations of Purchaser to Dematic under the Agreement including but not limited to the purchase price payable by Purchaser under the Agreement and/or Change Orders and all other amounts now and hereafter owing by Purchaser to Dematic hereunder.

10. **SOFTWARE LICENSE AND TITLE:** If Dematic provides Software or Custom Software (as defined in the SLS Terms) under this Agreement, the applicable license terms shall be as set forth in the SLS Terms.

11. **DELAYS:** If Dematic's **performance** is delayed or prevented by Purchaser or other cause uncontrolled by Dematic (including but not limited to acts of God, casualty, labor disturbance, strikes, riots, civil disturbance, inability to obtain supplies or transportation, explosion, flood, fire, power failure, embargos, boycotts, governmental or military action, war, terrorism, or any

order modification by Purchaser): (i) Purchaser agrees to pay Dematic invoices upon notification that the Goods are ready for shipment in accordance with the shipping schedule and to reimburse Dematic for expenses incident to such delay including, without limitation, the cost of engineering, the cost of Goods and labor escalations; maintaining, repairing, refurbishing and replacing Goods; and storage, demurrage, and pullout charges from installation site; and (ii) the time for delivery of the Goods and performance of the services will be extended for a period at least equal to the time lost by reason of the delay, and Dematic will not be liable for any damages caused by the delay. If Dematic staff reports to Purchaser's site to work and is unable to work a full eight (8) hour day because of equipment failure, early closing, meetings that suspend work and in which they are not included, Purchaser's failure to make its employees available as necessary, Purchaser's failure to satisfy previously identified prerequisites, or any other factor not under Dematic control, Dematic will bill (if a time and materials contract) or issue a change order (if a fixed fee contract) for a normal eight (8) hour day for each staff member so affected, and Purchaser shall reimburse Dematic such amounts.

- 12. INFRINGEMENT INDEMNITY:** Dematic agrees to indemnify and hold Purchaser harmless from any damages that may be awarded against Purchaser in any final judgment based upon a claim that the Goods or the use thereof, infringes any currently existing United States patents or other intellectual property rights of a third-party, provided that Purchaser notifies Dematic in writing, within ten (10) days of Purchaser's knowledge of any such claim, and gives Dematic the exclusive control of the defense and settlement of any claim, including at Dematic's option, the right to: (i) make changes in the Goods; (ii) replace the Goods; and/or (iii) obtain a license; to avoid any alleged infringement. Dematic shall have no obligation hereunder with respect to claims, suits or proceedings, resulting or related, in whole or in part, from: (i) any modifications of the Goods by Purchaser; (ii) any combining by Purchaser of the Goods with other items not furnished by Dematic; (iii) compliance by Dematic with Purchaser's specifications; or (iv) incorporating a design or modification at Purchaser's request. If Software or Custom Software is provided under the Agreement, the indemnity terms therefor are set forth in the SLS Terms.
- 13. ASSIGNMENT/SUBCONTRACTS:** Purchaser shall not delegate the performance of any obligation hereunder, nor assign any rights arising under the Agreement, to any third person without the prior written consent of Dematic. Dematic may assign any of its rights or delegate any of its duties pursuant to this Agreement and/or assign the entire Agreement to any subsidiary, affiliate, division, successor or acquirer of Dematic, without the consent of Purchaser. Dematic reserves the right to use subcontractors in the performance of any services to be performed by Dematic.
- 14. CONFIDENTIALITY:** The Agreement, any information marked as confidential and any other information (written/electronic/oral) which is of the nature that a reasonable person would understand its owner would not want it disclosed to the public will be considered to be "Confidential Information" of Dematic. Further, Confidential Information of Dematic shall also include (i) any document or data transaction between the parties, (ii) matters of a technical nature such as trade secret processes or devices, know-how, drawings, specifications, proposals, data, formulas, software, inventions (whether or not patentable or copyrighted), specifications and characteristics of products or services planned or being developed, and research subjects, methods and results, (iii) matters of a business nature such as information about costs, profits, pricing, policies, markets, sales, suppliers, customers, product plans, and marketing concepts, plans or strategies, (iv) matters relating to project initiatives and designs, (v) matters of a human resources nature such as employment policies and practices, personnel, including individual names, address, and telephone numbers, compensation and employee benefits, and/or (vi) other information of a similar nature not generally disclosed to the public. Purchaser shall not disclose Confidential Information except to its employees subject to a similar confidentiality agreement, who have a need to know to perform their responsibilities. The obligations set forth herein to maintain confidentiality shall not apply to Confidential Information that: (i) Purchaser can document was in the public domain prior to disclosure or becomes publicly known through no fault of the Purchaser; (ii) Purchaser can document through written evidence dated prior to the date of this Agreement, was known to the Purchaser prior to disclosure; (iii) is disclosed to Purchaser by a third-party, rightfully in possession of the Confidential Information and not in violation of a confidentiality agreement with Dematic or other restriction on use; or (iv) was independently developed by Purchaser without the use of the Confidential Information.
- 15. CHANGES IN LAWS AND REGULATIONS:** Dematic's prices and timely performance are based on all applicable laws, rules, regulations, orders, codes, standards or requirements of governmental authorities effective on the date of Dematic's Proposal. Any change to any law, rule, regulation, order, code, standard or requirement which requires any change hereunder shall entitle Dematic to an equitable adjustment in the prices and any time of performance.
- 16. MISCELLANEOUS:**
- a. Entire Agreement.** The Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes any prior agreement, understanding, discussions, representations or proposals made between the parties. The terms of this sale are expressly limited to the terms and conditions set forth in the Agreement. Any changes,

modifications, or additions to the Agreement are binding and enforceable only if made in writing and signed by the respective parties. Any and all terms set forth on Purchaser's purchase order or otherwise proposed by Purchaser are hereby objected to and shall be void unless expressly agreed to in a written document signed by both parties.

- b. Governing Law.** The Agreement shall be interpreted and enforced in accordance with the substantive laws of the State of Michigan without regard to its conflicts of law principles.
- c. Severability.** The **invalidity** or unenforceability of any provision of the Agreement shall not affect the enforceability or validity of the remaining provisions, and the Agreement shall be construed in all respects as if any invalid or unenforceable provision were omitted.
- d. Nonwaiver. Failure** of either party to require performance of any provision shall not affect its right to thereafter require full performance of that provision. The waiver by either party of a breach of any provision shall not constitute a waiver of any subsequent breach or nullify the effectiveness of such provision.
- e. Captions.** **Captions** preceding Articles are for convenience only and are not to be construed as part of the Agreement or as a limitation of the scope of the Article to which they refer.
- f. Definitions.** The word "Goods" shall mean all of the Dematic provided machinery, equipment, parts, materials, computer hardware and other items intended,(excluding stand-alone software) by Dematic to be installed under the Agreement.
- g. Ambiguities.** Each party and its counsel have participated fully in the review and revision of the Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting the Agreement.

Dematic Corp. If any alterations are needed to this Terms and Conditions form, contact legal first then insert Customer's name and date of changes here. If only a change to insert customer name in text or if no changes are needed, then just delete this text in yellow (leave the form number and date in).

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1.1.4 Software License and Services Terms

For Software and Software Support Services provided by Dematic Corp. (“Dematic”) to Purchaser, these Master Software License and Services Terms (“SLS Terms”) shall apply to each license granted and to all software support services provided by Dematic under the Sales Agreement or Service Agreement which incorporates these SLS Terms (the “Agreement”). Such software license(s) and support will be identified in the Proposal. These SLS Terms shall supplement the General Terms and Conditions incorporated in the Proposal and the Agreement.

1. DEFINITIONS

1.1 “**Custom Software**” means software, extensions, modifications, documentation or other materials specifically developed by Dematic for Purchaser’s use under the Agreement.

1.2 “**Designated System**” means a type of computer with a specified level of operating system, supported or provided by Dematic at the Site.

1.3 “**Documentation**” means the standard user guides and manuals, including any subsequently released Updates, for installation and use of the: (a) Software published by Dematic; and, if and when available, (b)(i) Third Party Product(s) published by their respective manufacturers; and (ii) Custom Software published by Dematic. “Documentation” does not include any product overviews.

1.4 “**Go-live Event**” means the date on which the Warranty Period starts.

1.5 “**Material Handling System**” means the system at the Site delivered or modified by Dematic under the Agreement, as generally described in the Executive Overview section of the Proposal.

1.6 “**Object Code Software**” means a version of the Software, Custom Software or Third Party Product(s), which can be executed without compilation or other forms of code generation, and does not allow a Purchaser to change or modify such software.

1.7 “**Proposal**” means the Dematic proposal document into which these SLS Terms are incorporated.

1.8 “**Products**” means any combination, in whole or in part, of the Software, Custom Software, Third Party Product(s) or Documentation provided to Purchaser under these SLS Terms and the Agreement.

1.9 “**Professional Services**” means software-related work performed by Dematic for Purchaser including, but not limited to, consulting, training, installation, needs analysis, project management, drafting of specifications, data conversion, testing and other consulting work, in each case relating to the Software, Custom Software and/or Third Party Product(s).

1.10 “**Remote Technical Support**” means the technical support services and assistance that Dematic provides to Purchaser by phone and/or by internet connection (such as VPN) to respond to Purchaser’s issues related to Software and where agreed, Custom Software, in each case as described in the Proposal.

1.11 “**Site**” means the installation site where the Software, Custom Software and/or Third Party Product(s) are being delivered to Purchaser by Dematic.

1.12 “**Software**” means the Object Code versions of the Dematic-developed software listed in the Proposal, as finalized in the Software functional specifications, including any subsequently released Updates.

1.13 “**Software Maintenance**” means the post-delivery services provided by Dematic of Software or Custom Software to sustain or enhance Software or Custom Software performance or other functional attributes, as described in the Proposal.

1.14 “**Software Error(s)**” means defective distribution media and/or a failure of the Software to perform substantially in accordance with the Documentation. As to Custom Software, “Software Error(s)” means a failure of such Custom Software to perform substantially in accordance with the Documentation therefor or with the written, mutually agreed upon specifications for Custom Software.

1.15 “**Third Party Product(s)**” means software, updates and documentation developed by a third party that is provided by Dematic as a Product hereunder with the Third Party license being sublicensed or assigned to Purchaser by Dematic.

1.16 “**Update**” means a subsequent release of the Software or Documentation which Dematic generally makes available for purchasers under Software Maintenance agreements at no additional license fee other than media and handling charges, provided Purchaser has paid the Software Maintenance fees for such licenses for the relevant time period. “Update” shall not include any release, option or future product function which Dematic licenses separately.

1.17 “**Upgrade**” means a major release or code replacement of Software that includes new functionality, enhancements, and/or improvements to an existing Software foundation, module, and/or solution.

2. RIGHTS GRANTED

2.1 **License – Software.** In consideration for the license fees specified in the Proposal, Dematic grants to Purchaser a perpetual (or a fixed term, as set forth in the Proposal if Purchaser is licensing Software on a subscription basis), single-site, non-exclusive and, except as may be allowed in connection with a permitted assignment, non-transferable right to:

2.1.1 Use the Software solely for Purchaser's operations on the Designated System or on a backup system if the Designated System is inoperative, at the Site consistent with the terms and conditions of the Agreement, the Proposal or the Documentation;

2.1.2 Make one (1) copy the Software for archival or backup purposes, and maintain a backup system that may be used while the Designated System is inoperative, consistent with the terms and conditions of the Agreement, the Proposal or the Documentation, provided Purchaser has procured any additional Third Party Product licenses required for such archival or backup copy;

2.1.3 Develop interfaces for the Software necessary for Purchaser's operations at the Site;

2.1.4 Allow third parties to use the Software for operating the Material Handling System so long as Purchaser ensures that use of the Software is in accordance with the terms of the Agreement and that such third parties execute a confidentiality agreement acceptable to Dematic;

2.1.5 Use the Documentation provided with the Software in support of Purchaser's authorized use of the Software; and

2.1.6 The license granted hereunder does not include a license to source code.

2.2 **License – Custom Software.** In consideration of payment of the license fees, as well as any fees and expenses for any Professional Services related to Custom Software, as specified in the Agreement, Dematic grants to Purchaser a single-site perpetual and non-exclusive right to have an unlimited number of internal users utilize all Custom Software created by Dematic under the Agreement in which Dematic retains title and rights of ownership. Purchaser's use of the Custom Software shall otherwise be consistent with all other terms and conditions detailed above in Section 2.1, and as otherwise specified in the Proposal. The license granted hereunder does not include a license to source code.

2.3 **License – Third Party Product(s).** The manufacturers of Third Party Product(s) shall specify the terms and conditions of the license for such Third Party Product(s) and Dematic shall sublicense or assign to Purchaser without recourse, any license, interest, or rights which Dematic has received from the third-party manufacturer. The license for Third-Party Products is governed by the terms of separate software license agreements which will be provided to Purchaser, and Purchaser agrees to be bound by the provisions of such license agreements. The license granted hereunder does not include a license to source code.

2.4 **Restrictions on Use.** Purchaser does not acquire any rights, express or implied, in the Software, Custom Software, or Third Party Products other than those specified in these SLS Terms. Purchaser may use the Software only on Designated Systems. Purchaser shall not copy or use the Software or Custom Software (including the Documentation) except as specified in these SLS Terms. All titles, trademarks, copyright, confidential or proprietary data notices, and other legends and logos shall be reproduced in any copies of the Products authorized by the Agreement or the Proposal. Purchaser may not relicense, rent, lease, distribute or grant other rights to the Software, Custom Software, Third Party Products or Documentation, or use the Software, Custom Software, Third Party Products or Documentation for third-party training, commercial time-sharing or service bureau use. Purchaser may not modify, reverse engineer, disassemble, decompile, reverse translate or in any manner decode the Software or Custom Software in order to derive any source code not licensed to Purchaser by Dematic.

2.5 **US Government Terms.** If the Software, Custom Software, and/or third party software is delivered or transferred to the U.S. Government, the Software, Custom Software, and/or third party software shall be treated as "Commercial Computer Software" as defined in Federal Acquisition Regulation (FAR) 2.101 or Department of Defense FAR Supplement (DFARS) 252.227-7014(a)(1), as applicable. In accordance with FAR 12.212 or DFARS 227.7202-1(a), as applicable, the U.S. Government shall only receive Dematic's standard commercial license in the Software, Custom Software, and/or third party software and additional terms and conditions may apply. If the Documentation is delivered or transferred to the U.S. Government, the Documentation shall be considered to be in support of a "Commercial Item" as defined in FAR 2.101. In accordance with FAR 12.211 or DFARS 227.7202-1(a), as applicable, the U.S. Government shall only receive Dematic's standard commercial license in the Documentation and additional terms and conditions may apply.

2.6 **Export Controls.** Purchaser represents and warrants that none of the Products will be exported without Purchaser first complying with all regulations and applicable laws, at Purchaser's own expense, and obtaining all required permits or licenses from the U.S. Department of Commerce and any other appropriate U.S. or local government agency.

3. PROPRIETARY RIGHTS

3.1 **Ownership – Software, Documentation and Third Party Product(s).** Purchaser acknowledges that all title and rights of ownership in the Products remain with Dematic and/or its suppliers and are protected by copyright, patent and/or trade secret laws.

3.2 **Ownership – Custom Software.** Unless otherwise specified in the Agreement, all programs, specifications, works of authorship, inventions, techniques, concepts, and ideas developed or provided by Dematic for Purchaser are the property of Dematic and all rights, title, and interest therein shall vest in Dematic. To the extent that title to any such works may not, by operation of law,

vest in Dematic or such works may be considered works made for hire, all rights, title, and interest therein are hereby irrevocably assigned to Dematic. All such materials, products, and deliverables shall belong exclusively to Dematic, with Dematic having the right to obtain and to hold in its own name copyrights, patents, or trademark registrations, or such other protection as may be appropriate to the subject matter, and any extensions and renewals thereof. Purchaser agrees to give Dematic and any person designated by Dematic, reasonable assistance, at Dematic expense, required to perfect the rights defined in this Section.

4. SERVICES

4.1 Remote Support and Software Maintenance. Dematic's price includes ninety (90) days of Remote Technical Support for the Software and/or Custom Software. Additional Remote Technical Support and Software Maintenance services will be purchased as set forth in the Proposal. The following items are not included within the scope of Remote Technical Support and Software Maintenance services unless otherwise agreed: (a) accounting principles, theory or practice; (b) Upgrade to Software or Custom Software; (c) consulting services including, but not limited to installations, implementations, customizations, applications design or recommendation, recovery of lost data, data corruption, or purchase recommendations; (d) questions regarding source code design or functioning as to interfacing with other systems; (e) requests for software design or development documentation or tools; (f) requests for additional features to be added to the Software; (g) training in the use of the Software; (h) Software problems caused by hardware or network malfunctions; (i) corrupt data caused by misuse of the Software or not caused by the Software; (j) Software problems created by Purchaser's negligence, fault or non-compliance with the terms of these SLS Terms; (k) software used on a computer system other than that as installed by Dematic; (l) software not licensed by Dematic; (m) non-English language support; (n) end user support; and (o) more than one support contact per installed location. In addition, Dematic shall have no obligation to provide Remote Technical Support or Software Maintenance services for any Software that is not current within two (2) prior releases of the most recent release.

4.2 Fee for Reinstatement. Purchaser shall incur reinstatement charges if Purchaser allows Software Maintenance and Remote Technical Support services to lapse and thereafter requests reinstatement of such services. For each year or part thereof that Purchaser did not pay for Software Maintenance and Remote Technical Support services (the "lapse period"), the reinstatement charges shall equal the annual fees for Software Maintenance and Remote Technical Support services applicable to the Software in effect at the time of the reinstatement divided by twelve (12) and multiplied times the number of months in the lapsed period.

4.3 Professional Services. Dematic will provide Professional Services agreed to by the parties under the terms of the Agreement. Dematic staff may include qualified sub-contractors. Dematic may replace or reassign its staff assigned to perform the services at Dematic's discretion.

4.4 Purchaser's Commitment of Resources. Purchaser agrees to ensure Dematic has reasonable and adequate access to Purchaser's records, facilities, workload information, source code, computer systems, computer time, data, report histories, and all other normal and reasonable materials required to perform the Professional Services. Purchaser further agrees to make its employees and third-party contractors available to Dematic as necessary to be trained or to otherwise facilitate the performance of the Professional Services as reasonably required by Dematic. Purchaser shall designate both a System Administrator and a Software Support Specialist who shall act as the primary contact(s) between Purchaser and Dematic in connection with the Software and Professional Services.

5. WARRANTIES

5.1 Limited Warranty – Software. Dematic warrants that the latest unmodified version of the Software released by Dematic and provided to Purchaser under the Agreement will perform in substantial compliance with the Documentation supplied with the Software, and the Warranty Period therefor shall be one (1) year following the Go-live Event.

5.2 Limited Warranty – Professional Services. Dematic warrants that its Professional Services will be performed in a competent and professional manner consistent with generally accepted industry standards, and if Professional Services are provided separate from a Material Handling System, the Warranty Period therefor shall be ninety (90) days from performance of the Professional Services.

5.3 Limited Warranty – Custom Software. Dematic warrants that the Custom Software, unmodified by parties other than Dematic, shall perform substantially as described in the written, mutually agreed upon specification for the Custom Software or in any documentation for the Custom Software drafted by Dematic, and the Warranty Period therefor shall be one (1) year following the Go-live Event.

5.4 Limited Warranty – Third Party Product(s). The respective manufacturers directly warrant the Third Party Product(s) to the end user of such products, in this case the Purchaser. Such warranties provide the sole and exclusive remedy for the Third Party Product(s), and Dematic does not in any respect add to or enhance such warranties.

5.5 Right to License. Dematic warrants that it is the owner of the Products and/or has the right to license the Products to Purchaser.

5.6 Limitations of Warranty. None of the foregoing warranties applies with respect to the following not created or performed by Dematic: enhancements and modifications of the Products; interfaces with the Products; or data conversions and other services. The

foregoing warranties apply only to Software Error(s) apparent in the unmodified, standard Software or Custom Software which is not merged with other software. Dematic does not warrant that the functions contained in the Software or Custom Software will meet Licensee's requirements, or that the operation of the Software or Custom Software will be uninterrupted or error free, or that all defects will be corrected. Dematic does not warrant that the Professional Services will meet Purchaser's requirements, or that performance of the Professional Services will be uninterrupted, or that all deficiencies or defects will be corrected. Dematic shall not be required to correct errors during the above described warranty periods attributable to: equipment malfunction; products other than the Software or Custom Software; use of the Software or Custom Software in conflict with or contravention of the Documentation or the terms of the Agreement. Pre-production ("Beta") releases of the Software are distributed on an "AS IS" basis. To obtain remedies for breach of warranty, Purchaser must give written notice to Dematic of any such Software Error within the Warranty Period.

5.7 Exclusive Remedies. For any breach by Dematic of the limited warranties contained in this Section, Purchaser's exclusive remedy, and Dematic sole obligation shall be as follows:

5.7.1 Software. During the Warranty Period, Dematic agrees to supply modifications, enhancements or "work-arounds" to remedy identified Software Error(s). If Dematic is unable to remedy a Software Error, Purchaser shall be entitled to terminate the license for the affected Software and recover the fees paid to Dematic for such Software. Any modified or replacement software will be warranted for the remainder of the original Warranty Period or for thirty (30) days, whichever is longer.

5.7.2 Professional Services. During the Warranty Period, Dematic agrees to perform the Professional Services again, or if Dematic is unable to perform the Professional Services as warranted, Purchaser shall be entitled to recover the fees paid to Dematic for the unsatisfactory Professional Services.

5.7.3 Custom Software. During the Warranty Period, Dematic agrees to supply modifications, enhancements or "work-arounds" to make the Custom Software operate in substantial compliance with the written, mutually agreed upon specifications or with any documentation for the Custom Software drafted by Dematic or by Purchaser if approved by Dematic. Any modified or replacement software will be warranted for the remainder of the original Warranty Period or for thirty (30) days, whichever is longer.

5.7.4 Defective Media. During the Warranty Period Dematic agrees to replace any defective media which prevents the Software or Custom Software from satisfying the limited warranty described above provided such defective media is returned to Dematic.

5.8 DISCLAIMER OF WARRANTY. THE WARRANTIES SET FORTH IN THESE SLS TERMS ARE THE ONLY WARRANTIES MADE BY DEMATIC APPLICABLE TO SOFTWARE, CUSTOM SOFTWARE AND PROFESSIONAL SERVICES AND DEMATIC MAKES NO OTHER WARRANTIES, EXPRESS, IMPLIED OR ARISING BY CUSTOM OR TRADE USAGE, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE.

5.9 Purchaser's Warranty -- Specifications Non-infringing. Purchaser warrants that the specifications for custom programming it provides to Dematic do not infringe or violate the intellectual property rights of third parties.

6. INDEMNIFICATION – SOFTWARE / CUSTOM SOFTWARE

6.1 Indemnification – Dematic. Dematic agrees to indemnify and hold Purchaser harmless from damages that may be awarded against Purchaser in any final judgment based upon claims that the Software or Custom Software infringes or violates any registered United States patent or copyright, or other intellectual property right of a third party provided that: (a.) Purchaser notifies Dematic in writing within ten (10) calendar days of the date Purchaser knows of such claim; (b.) Dematic has sole control of the defense and all related settlement negotiations; and (c.) Purchaser provides Dematic with the assistance, information and authority necessary to perform Dematic obligations under this Section.

6.2 Remedies. Dematic's sole obligation for any such infringement or violation of third party intellectual property rights shall be, at its option, to: (a) replace the Software or Custom Software with non-infringing software; (b) to modify the Software or Custom Software to avoid any such infringement; (c) to acquire the rights for the Purchaser to continue to use the infringing software at no cost to the Purchaser; or (d) if the foregoing options are not reasonably available, terminate the Agreement and promptly refund to Purchaser all license fees paid by Purchaser to Dematic for the infringing Software or Custom Software amortized over a five (5) year period from the date of initial delivery (i.e., a refund pro-rated on a monthly basis over a sixty (60) month term). Purchaser shall accept any such replacement software or modification as long as it is a functional equivalent of the Software or Custom Software it replaces.

6.3 Limitations of Indemnification. The foregoing indemnity shall not apply in respect of any infringement or violation of third party intellectual property rights resulting from Purchaser's use of the Software or Custom Software: (a) in conjunction with an enhancement, modification or interface not created or owned by Dematic; (b) with the use of a superseded release of the Software or Custom Software; or (c) in conjunction with other software not created or owned by Dematic. This Section states Dematic entire liability and Purchaser's exclusive remedy for infringement and claims of violation of third party intellectual rights.

6.4 Indemnification – Purchaser. Purchaser warrants that it has no knowledge that any enhancement, modification, interface or software created by Purchaser or for Purchaser by a third party other than Dematic infringes any registered United States patent or copyright, or violates any third party intellectual property rights. Purchaser shall at its own cost and under its own direction defend any and all claims or actions brought against Dematic involving any such infringement or violation of third party intellectual property rights, provided that: (a) Dematic notifies Purchaser in writing within ten (10) calendar days of the date Dematic knows of such claim; (b) Purchaser has sole control of the defense and all related settlement negotiations; and (c) Dematic provides Purchaser with the assistance, information and authority necessary to perform Purchaser's obligations under this Section.

7. FEES, EXPENSES, AND PAYMENT

7.1 Software Maintenance, Remote Technical Support and Other Fees. The Proposal sets forth the fees for and the payment terms applicable to the annual Software Maintenance and Remote Technical Support services, and for any Software licensed on a subscription basis. After the first year, the Software Maintenance and Remote Technical Support services are optional and may be purchased by Purchaser as agreed upon by the parties.

7.2 Cancellation of Scheduled Services. Purchaser may cancel Professional Services or the production of Custom Software specified in the Proposal by providing Dematic with thirty (30) days prior written notice. If Purchaser cancels such services, Purchaser shall pay Dematic the fees for such services accomplished for Purchaser, and for the expenses incurred by Dematic prior to and including the date of cancellation. Upon cancellation, Dematic shall deliver to Purchaser all completed work and work in progress, including, but not limited to, notes, draft reports and similar materials. If Purchaser cancels such services or terminates the Agreement with less than thirty (30) days prior written notice, Purchaser shall pay Dematic, in addition to the fees and expenses specified above, fifty percent (50%) of the rate agreed to in the Proposal, or if not so agreed, the applicable customer service labor rate for any committed personnel Dematic is unable to reassign to other work for those work days between the effective date of Purchaser's notice and the end of the thirty (30) days required for notice of termination or cancellation by this Section.

8. TERM AND TERMINATION

8.1 Term. Unless otherwise specified in the Proposal, each Software, Custom Software and Third Party Product(s) license granted under the Agreement shall commence upon installation and continue perpetually, or for the subscription period, as applicable, unless terminated under this Section.

8.2 Termination of License. If Purchaser fails to pay any amount when such amount is due and payable or otherwise violates these SLS Terms, the license granted herein for the affected Products shall immediately terminate and Purchaser shall have no right to use such affected Products.

8.3 Effect of Termination. Termination of any license hereunder shall not relieve Purchaser's obligation to pay all fees that have accrued or are otherwise owed by Purchaser hereunder. The parties' rights and obligations under the Agreement shall survive termination of the Agreement. Upon termination, Purchaser shall cease using, and shall return or destroy, all copies of the applicable Products.

9. COMPLIANCE

9.1 Verification. At Dematic's written request, not more frequently than annually, Purchaser shall furnish Dematic with a signed certification verifying that all Software is being used pursuant to the provisions of the Agreement and the Proposal. Dematic may audit Purchaser's use of the Software. Any such audit shall be conducted during regular business hours at Purchaser's facilities and shall not unreasonably interfere with Purchaser's business activities. If an audit reveals that Purchaser has underpaid fees to Dematic, Purchaser shall pay for such underpaid fees upon receipt of an invoice therefor from Dematic. Audits shall be conducted no more than once annually.