

TERMS AND CONDITIONS OF SALE

By ordering and/or purchasing goods from Norgren Pty Ltd by any means, you agree to be bound by these Terms and Conditions of Sale (Agreement). If you do not agree to the terms of this Agreement, you are not permitted to order and/or purchase goods from Norgren Pty Ltd.

1. INTERPRETATION

Unless otherwise inconsistent with the context the word "person" shall include corporation, "Company" shall mean Norgren Pty. Ltd. and its agents, servants and employees, and any of its Subsidiaries as defined in Section 9 of the Corporations Act 2001 (Cth) (if such subsidiary is named as the party making or accepting the order), "goods" shall include services, and "Purchaser" shall mean and include:

- (a) the person to whom any quotation is made and shall include any person offering to contract with the Company under this Agreement; or
- (b) any person who orders goods from the Company's online store website located at <http://store.norgren.com/au> (Website).

Important note: By agreeing to purchase goods from the Website, you agree to be bound by both this Agreement and the Website terms and conditions located at <http://store.norgren.com/AU/en-AU/TermsAndConditions.aspx> (Website Terms). The terms of this Agreement will prevail to the extent of any inconsistency between this Agreement and the Website Terms.

Words importing the singular number shall be deemed to include the plural and vice-versa. Words importing the male gender shall be deemed to include the female and neuter gender and vice-versa.

References to all legislation include such legislation from time to time amended re-enacted or substituted and any statutory instruments, regulations and orders issued under such legislation.

2. PRICE

- (a) Unless otherwise expressly agreed in writing (including in the case of the purchase of goods from the Website, where such prices are stated on the Website), the price of the goods shall be that price charged by the Company at the date of delivery plus the amount which the Company is required to pay on account of an excise, or charges which may be established or levied by any government authority (domestic or foreign) upon the goods or any part thereof, or the manufacture, use, sale of or delivery thereof.
- (b) Unless otherwise specified (including on the Website) any prices quoted do not include transportation costs. Goods shall be supplied ex-works.
- (c) The prices quoted are based on present day cost of labour and material and will be subject to contract price adjustment at the option of the Company. The Company reserves the right to review prices without any prior notice. Further, the Company is entitled to increase the price to cover additional costs incurred at the Purchasers request.
- (d) The prices and terms specified are based upon the latest information available to the Company as to the rates of exchange, manufacturers' or suppliers' price or charges, freight, forwarding and handling charges, insurances, customs or duty and excise, wages, cost of materials, transport and other expenses.
 - (i) The Company shall be entitled to increase the price by the amount of any increase in any of the foregoing rates, prices or charges paid or incurred by it.
 - (ii) The price specified in this contract has been determined using the Banque Nationale de Paris T/T selling rate of exchange of the relevant currency into Australian dollars as at the date of quotation.
Any variation of the rate in excess of 5% will be for the account or benefit of the Purchaser.
 - (iii) Reductions in any costs may be credited to the Purchaser at the Company's discretion.
 - (iv) A Certificate, signed by the Company, certifying the quantum of any such increase (referred to in 2.(d) above) shall be deemed to be sufficient evidence of any such increase.

3. GST

(a) Definitions

In this clause the expressions "Consideration", "GST", "Input Tax Credit", "Recipient", "Supply", "Tax Invoice" and "Taxable Supply" have the meanings given to those expressions in the A New Tax System (Goods and Services Tax) Act 1999 (GST Act). A "Supplier" means any party treated by the GST Act as making a Supply under this Agreement.

(b) Consideration is GST Exclusive

Unless otherwise expressly stated, all prices or other sums payable or Consideration to be provided under or in accordance with this Agreement are exclusive of GST.

(c) Payment of GST

- (i) If GST is imposed on any Supply made under or in accordance with this Agreement, the Recipient of the Taxable Supply must pay to the Supplier an additional amount equal to the GST payable on or for the Taxable Supply, subject to the Recipient receiving a valid Tax Invoice in respect of the Supply at or before the time of payment.
- (ii) Payment of the additional amount must be made at the same time as payment for the Taxable Supply is required to be made in accordance with this Agreement.

(d) Reimbursement of Expenses

If this Agreement requires a party (the "First Party") to pay for, reimburse, set off or contribute to any expense, loss or outgoing ("Reimbursable Expense") suffered or incurred by the other party (the "Other Party"), the amount required to be paid, reimbursed, set off or contributed by the First Party will be the sum of:

- (i) the amount of the Reimbursable Expense net of Input Tax Credits (if any) to which the Other Party is entitled in respect of the Reimbursable Expense ("Net Amount"); and
- (ii) if the Other Party's recovery from the First Party is a Taxable Supply, any GST payable in respect of that Supply such that after the Other Party meets the GST liability, it retains the Net Amount.

4. DELIVERY

All goods are at the risk of the Purchaser from the time of delivery, which shall be deemed to take place when at the Company's premises the goods are secured to a carrier's vehicle for transport to the Purchaser, unless otherwise expressly specified. Any quoted time for delivery by the Company shall be deemed to be an estimate only and no claim shall lie against the Company for failure to deliver within such time.

5. CANCELLATION

No order shall be cancelled without the consent of the Company and in such cases the Purchaser shall be liable to pay the Company all costs and expenses incurred by the Company, the Company's overseas suppliers and any local suppliers, in fulfilling the order up to such date of cancellation.

6. RETURNS

- (a) No goods will be authorised for acceptance of return and therefore for credit unless:
 - (i) the request is made within 14 calendar days of receipt of the goods;
 - (ii) the Company has given approval for the return of the goods;
 - (iii) the goods are in "as new" conditions;
 - (iv) all related despatch charges have been paid; and
 - (v) the documentation accompanying the goods shows the original invoice number and date.
- (b) The Company reserves the right to charge a restocking fee of up to 20% of the original invoice price of the goods returned, to cover inspection, repacking, storage, financial, clerical and other costs.

7. TITLE

- (a) The Purchaser and the Company agree that property in the goods shall not pass to the Purchaser until it has paid the purchase price of the goods in full to the Company.
- (b) Where the Company has not been paid the purchase price of the goods in full and the Company has delivered the goods to the Purchaser, the Purchaser agrees that the relationship between the Company and the Purchaser shall be fiduciary and that the Purchaser shall hold the goods as bailee for the Company and, if required, shall store the goods in a manner that clearly shows the ownership of the Company.
- (c) The Purchaser must keep all goods stored in accordance with sub-clause (b) insured against theft, damage and destruction (and if the Purchaser fails to insure the goods, the Company may do so and invoice the Purchaser for the cost of insurance).
- (d) Notwithstanding the provisions of sub-clause (b) the Purchaser may sell the goods to a third party in the ordinary course of the Purchaser's business and deliver them to that party prior to payment in full of the purchase price to the Company PROVIDED THAT where the Purchaser is paid for the goods by the third party the Purchaser shall hold a proportion of the third party's payment equal to the amount owing by the Purchaser to the Company in respect of the goods on trust for the Company and shall pay any such amount held on trust into a separate bank account so as to differentiate the money held on trust for the Company from other money owned or held by the Purchaser.
- (e) The Company and the Purchaser agree that the provisions of this clause apply notwithstanding any agreement, whether subsequent to this Agreement or not, between the Purchaser and the Company pursuant to which the Company gives the Purchaser credit.

8. REPOSSESSION

- (a) If for any reason whatsoever the Purchaser fails to make payment to the Company of any moneys due to the Company pursuant to this Agreement then, without prejudice to any other rights of the Company, the Company may resume possession of the goods and resell them without accounting to the Purchaser for the proceeds thereof.
- (b) The Purchaser shall permit the Company at any time to enter any premises occupied by the Purchaser at which the goods are from time to time normally kept or stored to enable the Company, in the event of default on the part of the Purchaser, in payment of any moneys owing to the Company, to remove the goods from such premises whether or not the removing or retaking thereof shall cause any damage or injury to the Purchaser's premises. The Company shall not be liable for any such damage or injury unless such damage or injury is caused solely by the wilful negligence of the Company, its servants or agents.
- (c) For the purpose of the Company's entrance to any such premises, the production by the Company of a copy of this Agreement shall constitute and evidence the Company's authority to enter any such premises and, at the discretion of the Company to remove such goods there from.
- (d) If the Company procures the removal of the goods from the Purchaser's premises pursuant to the provisions of this clause 8, then any costs incurred by the Company in connection with such removal and delivery of the goods to the Company's premises shall be borne by the Purchaser who shall indemnify the Company accordingly.

9. EXPENSES

The Purchaser agrees to pay the Company, in addition to all other sums required to be paid by the Purchaser, all legal and other expenses incurred by the Company in collecting any moneys due from the Purchaser to the Company under the terms and provisions of this Agreement and all legal and other expenses incurred by the Company in removing and/or retaking and/or selling, by legal process or otherwise, the goods covered by this Agreement.

10. INSOLVENCY & DEFAULT

If:

- (a) the Purchaser makes default in any payment due here under;
- (b) a resolution is passed or proposed or a petition is presented or an application filed for the winding-up of the Purchaser;
- (c) a Receiver or Receiver and Manager is appointed over any of the assets of the Purchaser;
- (d) the Purchaser makes or proposes to make any arrangement with its Creditors;
- (e) the Purchaser is placed under official management;
- (f) an execution is levied upon the assets of the Purchaser and is not within seven days satisfied,

then, and, in any such event, the Company may as its option withhold further deliveries or cancel the contract without prejudice to its rights here under PROVIDED HOWEVER that the Company may at any time, and from time to time, upon such terms as it may determine, waive any of its rights under this clause, but without prejudice to its rights there after to rely upon the happening there after of any of the events here in before referred to or upon the continuation after any such waiver of any state of affairs the subject of such waiver.

11. LICENCE

In the event of sale of goods requiring the importation into Australia of any goods, the contract for sale is conditional upon the granting of the necessary export or import licences or permits to remit monies overseas.

Further, the Purchaser shall be responsible for obtaining any permit, consent or approval required in respect of the installation or use of the goods from any Government Department, local authority or other person or body having jurisdiction in the matter.

12. PAYMENT

- (a) Unless otherwise agreed in writing or unless otherwise on the Website, payment terms are net cash 30 days from the end of the month in which the goods are delivered to the Purchaser, his carrier or agent.
- (b) The Company may charge the Purchaser interest on any overdue payments at the rate of interest set from time to time under the Penalty Interest Rates Act 1958 (Vic).
- (c) If the Company does not receive forwarding instructions sufficient to enable it to despatch the goods within 14 days of notification that they are ready, the Purchaser shall be deemed to have taken delivery of the goods and terms of payment shall apply from such date. The Purchaser will be liable for storage charges, payable monthly on demand, storage being at the Purchaser's risk.

13. DESCRIPTION AND SPECIFICATION

- (a) Whilst every effort is made to ensure the accuracy, the description, illustrations and material contained in any catalogues, price list, brochure, leaflet, the Website or other descriptive matter provided by or on behalf of the Company, represent the general nature only of the items described therein and, save where the Company has accepted an order for goods specified as so described or illustrated, shall not form any part of any order or agreement or amount to any representation or warranty and, save as aforesaid, the use of such description or illustration shall not constitute a contract of sale by description. The Company reserves the right to modify the design of goods without notice.
- (b) The Purchaser warrants that any goods manufactured, constructed or supplied by the Company which are based in whole or in part upon designs, drawings or specifications supplied to the Company by or on behalf of the Purchaser shall not infringe any letters patent or registered designs. The Purchaser shall indemnify and keep indemnified and hold harmless the Company against any action, loss, cost claim or damage that may be brought against or suffered by the Company for any breach of this warranty by the Purchaser.
- (c) The Company does not warrant or guarantee and it shall not be a term of any agreement between the Company and the Purchaser that any goods manufactured, constructed or supplied by the Company which are based upon any designs, drawings or specification supplied by the Company by or on behalf of the Purchaser or by the Company to the Purchaser will achieve any standard of performance or capacity whatsoever and the Purchaser acknowledges that it does not rely on the skill and judgement of the Company for the fitness for any purpose of any goods, drawings or designs so manufactured, constructed or supplied.

14. ACCESS

In respect of any work done on the Purchaser's premises or elsewhere than at the Company's premises, it shall, subject to any written agreement to the contrary, be the duty of the Purchaser to ensure that the conditions under which the work has to be prepared, the layout, means of access, accessibility of the different parts of the subject matter being worked upon or handled and other material circumstances shall be suitable to the Company, failing which the Company shall be entitled to charge a reasonable increase in the price, having regard to the prevailing circumstances.

15. GUARANTEE AND WARRANTY

- (a) The Company will repair or replace free of charge any goods or parts manufactured by it and shown to be defective by reason of faulty material or workmanship, provided that:
- (i) such defect becomes apparent within two years from the date of delivery of the goods; and
 - (ii) the goods have been used in accordance with the Company's operating procedures and directions where the sale is the subject of a quotation, in the manner specified in the original Quotation Form.
- (b) The foregoing warranty is limited to the replacement or repair of the defective goods or parts thereof, and is in lieu of any other warranty or conditions either expressed or implied by law, unless in writing and signed by the Company.
- (c) No claim will lie against the Company under this clause unless written notice of the alleged defect is given to the Company within 14 days of such defect becoming apparent.
- (d) The Company shall not be liable for any indirect or consequential damage or loss, including loss of production sustained by the Purchaser, or any other person in respect of or arising out of any defect or malfunction in the goods supplied or manufactured, whether or not such defect or malfunction is attributable to the negligence of the Company and whether or not such indirect or consequential loss was or ought to have been foreseeable by the Company.
- (e) The Company gives no warranty and is subject to no liability of any kind in respect of any item it does not manufacture. However, in any case where the Company is able to make a successful claim under a warranty given by the manufacturer, it will pass the benefit of that claim on to the Purchaser.
- (f) The Purchaser warrants to the Company that where the Purchaser supplies the goods to any other person in the course of trading, the Purchaser will not give or make any undertaking, assertion or representation in relation to the goods without the Company's prior written approval.

16. MINIMUM CHARGE

The Company reserves the right to increase the amount charged on any invoice up to the minimum charge as established by the Company at the date of the invoice. Other arrangements may apply in the case of the ordering or purchase of goods from the Website. If such alternative arrangements exist, this will be stated on the Website.

17. WAIVER

Failure by the Company to insist upon strict performance of any term or condition hereof shall not be deemed a waiver thereof or of any rights which the Company may have and shall not, and or shall any express waiver, be deemed to be a waiver of any subsequent breach of any term or condition.

18. FORCE MAJEURE

The Company shall not be liable to the Purchaser for any loss by the Purchaser caused by the Company's failure to observe the terms and conditions of this Agreement, or for any delay or failure to perform its obligations, if such failure or delay is occasioned by any cause beyond the Company's reasonable control and, without limiting the generality of the foregoing, such causes include war, fires, floods, strikes, lock outs, delays in transport, breakdowns in machinery, restrictions or prohibitions by a government or semi-government authorities or embargos.

19. SEVERABILITY

If any provision of this Agreement is held invalid, unenforceable or illegal for any reason, but is capable of being read down, it shall be read down to the extent necessary to render it being and enforceable. If it is not capable of being so read down, then such word or words or, if required, the whole provision shall there upon be severed and the remainder of this Agreement shall otherwise remain in full force and effect.

20. GOVERNING LAW

This Agreement is to be governed by, and construed in accordance with, the laws of the State of Victoria.

21. NOTICES

- (a) All notices or other communications required or permitted to be given in accordance with the provisions of this Agreement shall be in writing and may be given to the other party by hand delivery, pre-paid post, email, telex or facsimile message, addressed to the other party at its address stated hereto or on the Website.
- (b) Notice will be deemed given:
- (i) in the case of hand delivery at the time of delivery;
 - (ii) in the case of pre-paid post three days after the time of posting;
 - (iii) if sent electronically by email and confirmation is received from the relevant internet service provider that the transmission was successfully received in full and without error, on the day of transmission; or
 - (iv) in the case of telex and facsimile, upon completion of transmission.

22. MEDIATION

Either party may require any dispute arising which has not been resolved within 14 days to be referred to mediation. The parties must submit the dispute to a mediator for consideration in accordance with the Mediation and Conciliation Rules of the Institute of Arbitrators and Mediators Australia, which Rules are taken to be incorporated into this Agreement. The costs and expenses of the mediator shall be shared by the parties equally.

23. NO ASSIGNMENT

The Purchaser must not transfer or assign its rights under this Agreement to any other person without the prior written approval of the Company.

24. USE OF INFORMATION

- (a) The Purchaser agrees that the Company may obtain information about the Purchaser or any other person (including any credit or debt collection agencies) in the course of the Company's business, including credit assessment, debt collecting and direct marketing activities, and the Purchaser consents to any person providing the Company with such information.
- (b) The Purchaser agrees that the Company may use any information it has about the Purchaser relating to the Purchaser's credit worthiness and, subject to any confidentiality agreement between the Purchaser and the Company, give that information to any other person, including any credit or debt collection agency for credit assessment and debt collection purposes. The Purchaser agrees that any other information collected by the Company about the Purchaser is accessed or collected in the ordinary course of its business, including direct marketing activities.
- (c) The Purchaser must notify the Company of any change in circumstances that may affect the accuracy of the information provided by the Purchaser to the Company.
- (d) Notwithstanding anything else contained in this Agreement, where the Purchaser is a natural person, the Purchaser specifically agrees for the purposes of privacy legislation including the *Privacy Act 1988 (Cth)* to the Company:
- (i) being given a credit report on him or her for the purpose of assessing an application for credit or for the purpose of the collection of payments that are overdue under this Agreement; and
 - (ii) disclosing to or obtaining from another credit provider a credit report or personal information derived from a credit report on him or her for the purpose of assessing or exchanging information relating to his or her credit worthiness, credit history or credit capacity, and the Company advises the Purchaser and the Purchaser acknowledges that the Company may disclose the information it acquires about the Purchaser to a credit reporting agency.
- (e) All personal information of the Purchaser which is collected by the Company will be handled in accordance with the Company's Privacy Policy which is set out on its website at: <http://store.norgren.com/AU/en-AU/PrivacyPolicy.aspx>.

25. DENIED PARTY SCREENING

(a) Definition – Denied Party List

A list issued by a government, government agency, public body or international public organisation which provides names of entities and individuals that the Company may be restricted or prohibited from doing business with. This definition also includes lists of countries subject to trade sanctions, embargoes and export restrictions.

(b) Terms

- i) This Agreement is conditional upon the Company establishing conclusively that the Purchaser is not named on a Denied Party List. The Company will not be obliged to comply with the terms of this Agreement until and unless the Company has established that the Purchaser is not named on a Denied Party List.
- ii) The Company may terminate this Agreement and discontinue any ongoing supply to or business with the Purchaser [whether pursuant to this Agreement or otherwise] immediately, without notice and without liability, upon the Company becoming aware that the Purchaser is named on any Denied Party List.
- iii) By submitting an Order the Purchaser [and the individual submitting an Order on behalf of the Purchaser] consent to the Company processing any personal data provided through web-based screening software which will be used to establish whether [the Purchaser and/or the individual submitting this Order] [is/are] named on a Denied Party List.