By ordering and/or purchasing goods from IMI Australia 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 IMI Australia Pty Ltd.

1. INTERPRETATION

Unless 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 enter into contract with the Company pursuant to this Agreement;
(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/ 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 visible 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 by law, excepted by any law, or the cost of remitting any such excise or charges thereon, or any part thereof, whether the excise or charges are levied by the government or by any person to whom any invoice is issued under such law, or any person to whom any invoice is issued under such law.

(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.

(d) The Company is entitled to increase the price to cover additional costs incurred at the Purchaser’s request.

(e) The prices and terms specified are based upon the latest information available to the Company as to the rates of exchange, manufacturers’ or suppliers’ prices 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 the cost of the manufacture of the said goods, or in the cost of materials, labour and workmanship, or freight, or any other increased cost or expense (including any increased costs of insurance) to the Company resulting from any cause beyond the Company’s control.

(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, certify 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”, “Taxable Supply” and “Recipient” shall have the meanings given to those expressions in the A New Tax System (Provisional) Act 1999 (GST Act).

“Supplier” means any party treated by the GST Act as making a Supply under this Agreement.

(b) Consideration is GST Exclusive

Unless otherwise expressly agreed, 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 rate of GST payable as from time to time by the Taxing authority for the taxing period in which the consideration for the Supply is received by the Supplier.

(ii) If GST is imposed on any Supply, all legal and other expenses incurred by the Company in fulfilling the order and/or purchasing goods from the Company are included in the purchase price of the goods and not be liable for any such damage or injury unless such damage or injury is caused solely by the willful negligence of the Company, its servants or agents.

(d) For the purpose of the Company’s entrance to any such premises, the Company by 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 from there.

(e) If the Company procures the removal of the goods from the Purchaser’s premises such removal being, in the absence of any contrary agreement, to be 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.

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’s premises (otherwise expressly specified). Any quoted time of delivery by the Company shall be deemed to be an estimate only and no claim shall lie against the Company for failing to deliver the goods within the time stated. If the Purchaser delays the delivery for reasons not attributable to the Company then title to and risk in the goods shall pass to the Purchaser on EXW 2010 terms. The Company shall have the right to issue an invoice at readiness to ship and to get paid in full. Company shall organize proper storage at the risk and cost of the Purchaser.

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 a return of the goods;

(iii) the goods are in “as new” conditions;

(iv) all related dispatch charges have been paid; and

(v) the document accompanying the goods shows the original invoice number and date.

(b) The Company reserves the right to charge a restocking fee of between 20% to 70% 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 same shall remain the property of the Company and the Purchaser shall be liable to repack, store and risk in the goods until they are paid for. The Company reserves the right to sell the goods at the Company’s option and the Purchaser will be liable for the proceeds thereof.

(c) The Company will 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 so do 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 third 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 held by the Purchaser.

(e) The Company and the Purchaser agree that the provisions of this clause apply notwithstanding the transfer of ownership of the goods to a third party.

(f) The Company and the Purchaser agree that the provisions of this clause apply notwithstanding the transfer of ownership of the goods to a third party.

8. REPOSESSION

(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 any of the goods delivered to the Purchaser or held by the Purchaser and not paid for in the normal course of the Purchaser’s business and not paid for in the normal course of the Purchaser’s business and not paid for in the normal course of the Purchaser’s business and not paid for in the normal course of the Purchaser’s business.

(b) The Company shall be entitled to increase the price by the amount of any increase in the cost of the manufacture of the said goods, or in the cost of materials, labour and workmanship, or freight, or any other increased cost or expense (including any increased costs of insurance) to the Company resulting from any cause beyond the Company’s control.

(c) 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 held by the Purchaser.

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 respect of or for retaining 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 hereunder;

(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 at its option without further determination or action cease to sell and cancel the goods without prejudice to its rights hereunder 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 hereunder; and upon the Company giving notice in writing, the Company may then, and in any such event, the Company may at its option without further determination or action cease to sell and cancel the goods without prejudice to its rights hereunder 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 hereunder; and upon the Company giving notice in writing.

11. LICENCE

(a) Unless otherwise agreed in writing or unless otherwise on the Website, payment terms are net cash due from the end of month in which the goods are delivered to the Purchaser, his carrier or agent.
21. PERSONAL PROPERTY SECURITIES REGIME

21.1 DEFINITIONS

(a) For the purposes of this clause, the following definitions apply:

"Company Property" means all property in which the Company has an interest under the terms of the Transaction Documents or a Security Interest for the purposes of the PPS Law;

"PPSA" means the Personal Property Securities Act 2009 (Cth);

"PPS Law" means the PPSA and any amendment made at any time to any other law as a consequence of the PPSA;

"Security Interest" has the meaning given to that term in section 12 of the PPSA;

"Transaction" means any transaction contemplated by or in connection with any Transaction Document; and

"Transaction Document" means:

(i) the Terms and Conditions of Sale;
(ii) any document or agreement that the parties agree in writing to be a Transaction document for the purposes of these Terms and Conditions of Sale;
(iii) any document or written agreement that is entered into under any of the above;
(iv) any written undertaking by or to a party or its lawyers that is given under or related to any of the above.

(b) Unless defined in clause 21.1(a), or clause 1, terms used in this clause 21 have the meaning given to them in the PPSA.

21.2 PPS LAW

(a) To the extent permitted under the PPS Law, the parties agree to the provisions in this clause 21.

(b) If, in the Company's opinion:

(i) any Transaction Document contains or is a Transaction or a transaction document that creates or evidences a Security Interest in any of the above, the Purchaser consents to:

(A) Transaction Document contains or;
(B) any of the Transactions, or

(ii) the PPS Law does or could affect the Company's rights or obligations under or in connection with the Transaction Documents or any of the Transactions, the Company may do any of the things contemplated in clause 21.2(c).

(c) If clause 21.2(b) applies, the Purchaser agrees that the Company may, at its discretion, do any one or more of the following:

(i) register, or give any notification in connection with, any relevant Security Interest;
(ii) exercise rights in connection with the Security Interest;
(iii) do anything to adjust, reduce or modify any security or Security Interest (including amending any Transaction Document, executing any new document or agreement, obtaining consents and supplying information) so that:
    (A) the Company requires to:
      (i) ensure that any Security Interest is enforceable, perfected and otherwise effective;
      (B) register, or give any notification in connection with, any Security Interest in order to confer the priority the Company requires;
      (C) exercise rights in connection with the Security Interest;
      (D) ensure that its rights and obligations are not adversely affected, or that its position is improved;
    (d) the Purchaser must comply with any notice received pursuant to clause 21.2(c); and

(e) The Purchaser gives the Company a power of attorney to complete and execute any and all documentation to give effect to clause 21.2(c).

(f) If:

(i) clause 21.2(b) applies; and
(ii) the Company requirements (after doing all things reasonably practicable under clause 21.2(c)) that its rights or obligations under or in connection with the Transaction Documents or any of the Transactions have been or will be materially adversely affected, the Company may give notice to the Purchaser cancelling all or any of that Transaction Document or any other document in connection with the Transactions and requiring:

(i) full repayment of all outstanding monies; and
(ii) the return of all Company Property within the control of the Purchaser, within 30 days after the date of notification.

21.3 The Purchaser's PPSA representations, warranties and acknowledgments

(a) The Purchaser represents and warrants for the purposes of section 115 of the PPSA that the Company Property is commercial property.

(b) The Purchaser acknowledges that where the Company Property, over which a Security Interest is created, gives rise to Proceeds then the Security Interest continues in the Company Property and attaches to the Proceeds.

(c) The Purchaser acknowledges that Company has entered into this Terms and Conditions of Sale in reliance on the representations, warranties and acknowledgments in this clause.

21.4 The Purchaser undertaking

(a) If the Purchaser holds any Security Interest and failure to perfect any such Security Interest will materially adversely affect its business, the Purchaser must establish and maintain suitable PPS Law procedures to ensure that it effectively:

(i) perfects and registers all such Security Interests;
(ii) takes all steps under the PPS Law to continuously perfect all such Security Interests;
(iii) obtains the highest ranking priority possible for all such Security Interests (such as perfecting a Purchase Money Security Interest or perfecting a Security Interest by Control); and
(iv) takes all necessary action to reduce the risk that a third party acquires an interest in the Security Interest, such as by including the Serial Number in a Financing Statement for Personal Property that may or must be described by a Serial Number);

(b) Everything the Purchaser is required to do with this clause 21.4 is at the Purchaser's expense.
21.5 GENERAL
(a) the Company reasonably suspects that the Purchaser is not complying with clauses 21.2 and 21.4 and requests an audit of the Purchaser's PPS law procedures, the Purchaser must arrange such audit at its expense.
(b) The audit must be found satisfactory to the Company, acting reasonably, and any recommendations from the audit must be implemented by the Purchaser immediately.
(c) The Purchaser agrees to pay or reimburse the costs of the Company in connection with anything the Purchaser is required to do under this clause 21.5.
(d) The Purchaser irrevocably and unconditionally waives its right to receive from the Company any notice under the PPS Law (including notice of a Verification Statement) unless required by the PPS Law and if the notice cannot be excluded.
(e) The Purchaser must not register a Security Interest against the Company without its prior written consent.
(f) The Purchaser must notify the Company immediately of any change in its name, address, and any other information provided to the Company to enable the Company to register a financing change statement under the PPS Law if required.
(g) The parties agree that the subject matter referred to in section 275(1) of the PPS Law is confidential and each party must not disclose any such information to a third party.

21.6 CONTRACTING OUT
(a) The following provisions of the PPS Law do not apply and, for the purposes of section 115 are "contracted out" of this Terms and Conditions of Sale, namely sections:
(i) 95 (notice of removal of accession);
(ii) 96 (person with an interest may retain the accession);
(iii) 121(4) (enforcement of liquid assets – notice to grantor);
(iv) 125 (obligations to dispose of to retain collateral);
(v) 130 (notice of disposal);
(vi) 132(2)(a)(i) (contents of statement of account after disposal);
(vii) 132(4) (statement of account if no disposal);
(viii) 135 (notice to redeem);
(ix) 142 (redemption of collateral);
(x) 143 (re-instatement of security agreement).
(b) The parties agree that the Company has the power to retain, deal with or dispose of any property seized by it in the manner specified in sections 123, 125, 126, 128, 129 and 134(1) and in any other manner it deems fit.

22. TERMINATION
If the Purchaser terminates the contract for reasons not attributable to the Company, then the Purchaser shall pay the Company the contractual price of the goods sold and for any other reasonable costs and obligations incurred by the Company for properly executing the contract including overhead and lost profits.

23. LIMITATION OF LIABILITY
Notwithstanding any other clause in this agreement to the contrary, Company's maximum aggregate liability for any and all damages and losses shall not exceed the value of the order except in case of gross negligence and/or wilful misconduct. Neither the Purchaser nor the Company shall be responsible to the other party for consequential damages and indirect losses of any kind. The Company shall not be liable at all on any ground whatsoever for any property seized by it in the manner specified in sections 123, 125, 126, 128, 129 and 134(1) and in any other manner it deems fit.

24. 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 or facsimile, upon completion of transmission.

25. 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.

26. 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.

27. 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.

28. 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 not do 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.