

**NORGREN LIMITED
TERMS OF TRADE**

Equipment and goods ("Goods") supplied by NORGREN LIMITED ("Norgren") are supplied to the Buyer ("Buyer") on the following terms and conditions:

1. Acceptance of Terms
 - 1.1 These terms of trade shall prevail over any terms and conditions contained in any order or offer made by the Buyer or any document used by the Buyer, which shall have no contractual effect, and the Buyer's acceptance of the goods shall constitute acceptance of these terms of trade.
 - 1.2 Norgren reserves the right to accept in whole or in part, or reject any order submitted by the buyer.
2. Prices and Quotations
 - 2.1 Goods will be charged at prices ruling at the time of dispatch.
 - 2.2 The price of indent orders may be subject to increases between the date of order and the date of delivery due to fluctuations in the international monetary exchange rates, shipping rates, shortages, duties and tariffs, and other events beyond the control of Norgren.
 - 2.3 The Buyer will pay goods and services tax on all invoices, and any levies and duties properly payable in respect of the supply of the Goods.
 - 2.4 Unless otherwise stated therein quotations shall be available for acceptance for a maximum period of 30 days from the date of issue and may be withdrawn by Norgren within such period at any time by written or oral notice.
 - 2.5 Orders are accepted subject to Norgren receiving any necessary licence to purchase or to use the required raw materials and to Norgren being able to obtain such raw materials.
3. Delivery and Risk
 - 3.1 Norgren reserves the right to deliver Goods by instalments. Each instalment will comprise a separate contract on these terms.
 - 3.2 Payment for each instalment shall be in accordance with clause 4, and failure to pay on the due date shall entitle Norgren to suspend deliveries of other instalments without prejudice to any other remedy available to Norgren.
 - 3.3 Unless expressly granted in writing, all goods are at the risk of the Buyer from the time of delivery, which shall be deemed to take place at the time when the Goods are secured, at Norgren's premises, to a carrier's vehicle for transport to the Buyer, unless otherwise expressly specified. Any quoted time for delivery by Norgren shall be deemed to be an estimate only and no claim shall lie against Norgren for failure to deliver within such time.
 - 3.4 Norgren will make every effort to ensure delivery of Goods is on time but will not be liable for any loss or damage, including (without limitation) consequential loss arising in any way from any delay in delivery.
 - 3.5 The Buyer must make any claims for short deliveries or damage during delivery within 48 hours of delivery, and must quote the date of delivery and the delivery docket number.
4. Payment and Title
 - 4.1 Where Norgren has agreed to extend credit to the Buyer, payment is to be made in full by the 20th of the month following the dispatch of an invoice. Payment by cheque or by any type of bank transfer will not be considered payment until the payment has been fully cleared through the banking system into Norgren's bank account. The Buyer shall have no right to set off any sum due to Norgren against any amount the Buyer may claim against Norgren.
 - 4.2 If payment is not made in full by the due date, Norgren is entitled to charge the Buyer interest on the unpaid overdue balance at the rate of 2% per annum above the current commercial overdraft rate charged by Norgren's bankers, compounding monthly on the unpaid balance owing on the first day of each month until payment in full is received by Norgren and Norgren may at its option suspend delivery of further Goods until the account is paid. Norgren may also charge to the Buyer all its actual costs of collecting any overdue account.
 - 4.3 Notwithstanding any period of credit or the passing of risk in the Goods supplied by Norgren to the Buyer in accordance with clauses 4.1 hereof, property in all Goods sold shall remain with Norgren until payment is made for them.
 - 4.4 Until payment in full is made by the Buyer for the Goods, the Buyer holds the Goods as agent for Norgren and will, if required by Norgren, store the Goods in such a manner that they are clearly identifiable as the property of Norgren.
 - 4.5 This retention of title clause 4 creates, and the buyer grants, a security interest under the Personal Property Securities Act 1999 ('PPSA') as security for the payment for the Goods and any other moneys due and payable to Norgren by the Buyer from time to time and performance of the Buyer's obligations. The Security Interest extends to the proceeds of selling the Goods (as specified in s.45 and s.46 of that Act); extends to any product or mass into which the Goods sold are processed or commingled (as specified in s.82 of the Act); and maintains its priority if the Goods become part of an accession (as specified in s.79 of the Act.) The Buyer will:
 - (a) at the request of Norgren, promptly make, do, execute and deliver (or cause to be made, done, executed and delivered) any documents, contracts, leases or deeds that Norgren may require from time to time to give effect to the security interest granted to Norgren;
 - (b) at the request of Norgren, provide all necessary information and do anything else Norgren may require to ensure the security interest created by this agreement constitutes and remains a perfected Purchase Money Security Interest (including by registration of a Financing Statement or a Financing Change Statement) in the Goods and their proceeds having priority over all other security interests in the Goods; and
 - (c) notify Norgren in writing of a change of name at least 14 days prior to the date on which the change of name becomes effective.
 - 4.6 The Buyer waives the right to receive a verification statement under the PPSA and nothing in sections 114(1)(a), 117(1)(c), 133 and 134 of the PPSA shall apply to this Agreement. The rights of the Buyer as debtor in sections 116, 119, 120(2), 121, 125, 126, 127, 129 and 131 of the PPSA shall not apply to this agreement.
 - 4.7 Where Norgren has rights under Part 9 of the PPSA or in addition to those under Part 9 of the PPSA, those rights shall continue to apply and are not limited, or excluded (or otherwise adversely affected) by any right provided by this agreement or by law.
 - 4.8 If the Buyer defaults in payment of any amounts due under this agreement or otherwise commits a breach of this agreement or this agreement is terminated, Norgren may, without affecting any of its other rights or remedies:
 - (a) enter the premises of the Buyer (and the Buyer hereby grants an irrevocable right and authority to do so) to take possession of the Goods (and/or any Processed Goods), and sell the Goods (and/or Processed Goods). The Buyer indemnifies Norgren against any loss, damage, liability and expenses (including legal expenses) Norgren pays, suffers, incurs or is liable for in connection with Norgren taking possession of the Goods (or the Processed Goods) or otherwise exercising its rights under this clause. Norgren may only recover and resell for its own account sufficient Goods to satisfy all unpaid liabilities, the costs of recovery and resale and the costs referred to in this sub clause. If Norgren recovers any excess, it will not be liable in damages to the Buyer but must account to the Buyer for the excess; or
 - (b) appoint a receiver in respect of the Goods (and/or the Processed Goods) (including the proceeds of the same). Any receiver so appointed may take possession of the Goods (and/or Processed Goods) and resell such Goods and otherwise exercise all rights and powers conferred on a receiver by law.
5. Manufacturers Warranties
 - 5.1 Where Goods are subject to a manufacturer's or supplier's warranty, Norgren will make the benefit of that warranty available to the Buyer.
6. Exclusion of Liability
 - 6.1 Norgren will not be liable to the Buyer or to any other person for any damages whatsoever caused either to the Goods or as a result of the use of the Goods, if the Goods are:
 - (a) fitted by unqualified tradespersons, or fitted or used in any manner not in accordance with Norgren's or the manufacturer's instructions or with current industry standards of skill; or
 - (b) altered or adapted to a use that they are not specifically intended for; or
 - (c) added to or repaired using components not recommended or approved by the manufacturer of the Goods,

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7. Intellectual Property Rights
- 7.1 Copyright in all drawings, specifications and other technical information provided by Norgren in connection with the Goods or their supply is vested in Norgren and subject to the conditions under the Copyright Act 1994. The Buyer is not permitted to use the trade marks, designs or other intellectual property rights of Norgren without the prior written consent of Norgren.
- 7.2 Where Norgren has followed specifications provided by the Buyer, the Buyer shall indemnify Norgren against all damages, penalties, costs and expenses in respect of which Norgren may become liable through the utilisation of those specifications including those arising from infringement of any patent, trademark, copyright, registered design or any other right of any third party.
- 7.3 Data and Technical Information
The information contained in the advertising sales and technical literature issued by Norgren may be relied upon to be accurate only in the exact circumstances in which it is expressed otherwise any illustrations, performance details, examples of installations and methods of assembly and all other technical data in such literature are based on experience and upon trials under test conditions and are provided for general guidance only. No such information or data shall form part of the contract unless specifically incorporated therein by Norgren.
8. Cancellation and Returns
- 8.1 Cancellation will only be accepted by Norgren on condition that all costs and expenses incurred by Norgren up to the time of cancellation and all loss of profits and other loss or damage suffered by Norgren as a result of such cancellation will be paid forthwith by the Buyer to Norgren.
- 8.2 At its option, Norgren may accept return of Goods (other than indented Goods and/or specified made-to-order Goods) which are not defective for credit provided that:
- (a) Norgren has consented to the return;
 - (b) Goods are returned to Norgren at the Buyers cost within 14 days of delivery;
 - (c) The returned Goods show the original invoice number and date; and
 - (d) The Goods are returned in "as new condition".
- 8.3 Norgren at its option may charge a re-stocking fee of up to 20% of the invoiced price of the returned goods to cover inspection, repacking, storage, financial and clerical costs.
- 8.4 The Buyer will return any defective Goods to Norgren at its own cost.
9. Business Purposes
- 9.1 If the Buyer acquires the Goods from Norgren for the purposes of a business in any way, or the Buyer holds itself out as acquiring the Goods for the purposes of a business in any way, the Buyer agrees to the following terms:
- (a) the conditions, warranties and guarantees set out in the Sale of Goods Act 1908 and the Consumer Guarantees Act 1993 ("CGA") or implied by the common law will not apply and are excluded from this agreement; and
 - (b) the Buyer may not claim any of the remedies set out in the CGA from Norgren or from any manufacturer of the Goods or from any manufacturer of any components or parts of the Goods.
10. Limitation of Liability
- 10.1 Norgren's liability shall be limited to replacement or repair (at Norgren's option) of any Goods it considers to be defective or in respect of which it has any liability hereunder on whatsoever grounds and whether in contract or in tort under any statute or other legal duty. Norgren and its employees, contractors and agents and any manufacture(s) of the Goods or any of their materials or components, will not be liable to the Buyer for any loss or damage however that loss or damage is caused or arises. This exclusion of liability includes, but is not limited to consequential loss or damage (including the cost of remanufacture of products containing the Goods). The exclusion also includes costs incurred in returning the Goods to Norgren or to any manufacturer.
11. Buyer Warranties
- 11.1 The Buyer warrants that if the Buyer purchases any Goods from Norgren for re-supply as, or incorporates any Norgren Goods into, goods ordinarily acquired for personal household or domestic use ("Consumer Products") it will supply the Consumer Products on the following conditions:
- (a) if it supplies the Consumer Products for re-supply by its customer it will ensure that its terms and conditions of supply require its customer and each person in the distribution chain to include in its supply agreements or conditions of sale obligations requiring its Buyer to exclude liability for any claims under the CGA, but only where the end user/consumer acquires the Consumer Products for business purposes.
 - (b) if it supplies the Consumers Products directly to an end user/consumer it will do so using terms and conditions of supply which exclude liability for any claims under the CGA, but only where the end user/consumer acquires the Consumer Products for business purposes.
- 11.2 The Buyer warrants that it will indemnify Norgren against any failure by the Buyer, the Buyer's customers or any person in the distribution chain to properly contact out of liability to business end user/consumers under the CGA.
12. Force Majeure
- 12.1 Neither party shall be under any liability for any delay, loss or damage caused wholly or in part by act of God, governmental restriction, condition or control or by reason or any act done or not done pursuant to a trade dispute whether such dispute involves its employees or not or by reason of any other act, matter or thing beyond its reasonable control including failure by the other party to carry out the provisions of these conditions.
13. Advisory Service:
- 13.1 Any advice or recommendations which Norgren may provide in respect of the Goods or their use is part of Norgren's sales service and while every effort is made to ensure such advice or recommendations are accurate, Norgren shall not be liable for any loss, damage or claims arising therefrom.
14. Dimensions:
- 14.1 Norgren reserves the right to alter or change dimensions of the Goods supplied within reasonable limits having regard to the nature of the Goods. Dimensions specified are to be treated as approximate only unless the Buyer specifically states in writing that exact measurements are required.
15. General
- 15.1 Norgren reserves the right to amend these terms and conditions at any time provided such terms and conditions will only be effective for orders subsequently agreed between the parties.
- 15.2 These terms and conditions shall be governed by and construed in accordance with the laws of New Zealand, and any proceedings shall be held in Auckland.
16. Waiver
- 16.1 Failure by Norgren to insist upon strict performance of any term or condition hereof shall not be deemed a waiver thereof or of any rights which Norgren 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.

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