

Nordic General Conditions of Sale

Supply and delivery of pneumatic products (with NL 17 E)



1. GENERAL CONDITIONS OF SALE

1.1 In these General Conditions (unless the context otherwise requires):-

“Agreement” shall mean the supply agreement for delivery of pneumatic products entered into by the Seller (IMI Precision Engineering/Norgren) and the Buyer (Customer).

“Intellectual Property Rights” shall mean all patents, rights to inventions, design rights (whether registered or unregistered) copyright and related rights, moral rights, database rights, supplementary protection certificates, petty patents, utility models, rights in designs, trade marks, service marks, trade names, domain names, rights in goodwill or to sue for passing off, rights in undisclosed or confidential information (such as know how, trade secrets inventions (whether patentable or not)) and other similar or equivalent rights or forms of protection (whether registered or unregistered) and all applications (or rights to apply) for, and for renewals and extensions of, such rights as may now or in the future exist anywhere in the world;

“NL 17 E” shall mean the General Conditions for the supply of Machinery and other Mechanical, Electrical and Electronic Equipment, NL 17 E, attached as Sub Annex A;

1.2 All quotations are made and all orders are accepted by the Seller subject to the Agreement and the conditions set out in these General Conditions. All other terms, conditions or warranties whatsoever are excluded from the Agreement or any variation thereof unless expressly accepted by the Seller in writing (order acknowledgments do not constitute such acceptance).

2. PRICES

The prices for the Products shall be as set out in the Agreement. The Prices for the Standard Products according to the Seller’s current price list at the time of ordering. List prices will be revised by the Seller on 1st of January every year without prior notice. The Seller reserves the right to adjust prices at any time for all Products in the event of an increase of 5% (or more) in material costs, labour costs, transport costs or exchange rates from the date of entering into the Agreement or from the latest increase in prices, as the case may be. Norgren reserves the right to designate a minimum order charge of [SEK 1.000/DKK 1.000/NOK 1.000/EUR 150] equivalent, which shall apply to any orders for Standard/Buyer Specific Products (the “Minimum Order Charge”). Where any order is placed for Standard/Buyer Specific Products having a total invoiced value (excluding Value Added Tax, transport costs, packaging and/or any other additional costs that the Buyer may pay to Norgren in accordance with the Agreement) of less than the Minimum Order Charge Norgren reserves the right to make an additional charge equal to the difference between the Minimum Order Charge and the total invoiced value for the Standard/Buyer Specific Products (as calculated above).

3. DELIVERY TERMS

3.1 Unless otherwise agreed in writing by the Seller delivery shall be FCA – Free Carrier (Incoterms 2010) to Alpen, Germany.

3.2 Risk of damage to or loss of the Products shall pass to the Buyer upon delivery in accordance with the Incoterms.

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4. PAYMENT TERMS

- 4.1 Where the Seller is either Norgren A/S, Norgren Finland OY or Norgren AS, the Seller shall be entitled to issue invoices to the Buyer on delivery of the Products and payment shall be made by the Buyer net 20 days from the invoice date.
- 4.2 Where the Seller is Norgren Sweden AB, the Seller shall be entitled to issue invoices to the Buyer on delivery of the Products and payment shall be made by the Buyer net 30 days from the invoice date.
- 4.3 Clause 20 of NL 17 E shall not apply.

5. TERMINATION

- 5.1 Either Party shall have the right to terminate the Agreement with immediate effect or suspend performance of the Agreement in respect of the whole or any part of the order for the Products by written notice in the event of: (a) the other Party makes or proposes any voluntary arrangement or any other composition or scheme or arrangement with or assignment for the benefit of its creditors; (b) the other Party becomes subject to an administration order or becomes bankrupt or goes into liquidation; (c) the other Party has a petition presented for its winding up or has an application made for the appointment of a provisional liquidator or has a creditors meeting convened; (d) an encumbrancer takes possession or a receiver or administrative receiver is appointed over any of the property or assets of the other Party; (e) the other Party becomes unable to satisfy its debts as they fall due or ceases or threatens to cease to carry on business.
- 5.2 The Seller shall have the right to terminate the Agreement with immediate effect or suspend performance of the Agreement in respect of the whole or any part of the Products by written notice where:
- (a) the Seller reasonably believes that any of the events mentioned in 5.1 (a) – (e) above or any equivalent or similar event under any relevant laws to which the Buyer or any connected person is subject has or may occur;
 - (b) the Buyer or any connected person commits or allows to be committed any material breach of this Agreement and fails to remedy the breach within a reasonable time (such period being not less than 14 days and not more than 30 days);
 - (c) the Buyer undergoes a change of control. For the purposes of this Clause “Control” means ownership of more than half of the capital, business or assets of the Buyer or the power to exercise more than half the voting rights or the power to appoint more than half the members of the board of directors.
- 5.3 Upon termination or expiry of the Agreement the Seller shall be entitled at its sole discretion immediately to require the Buyer to purchase all or part of: (a) the materials and work-in-progress held by or on behalf of the Seller in contemplation of supply to the Buyer under this Agreement at a price equal to the cost to the Seller plus 10% and VAT thereon; and (b) any stock retained by the Seller at the price for the relevant Products on the date of termination/expiry.

6. LIMITATION OF LIABILITY

- 6.1 The Seller does not exclude liability for death or personal injury caused by its negligence or for fraudulent misrepresentation or any other liability that cannot be excluded or limited by law.
- 6.2 Under no circumstances whatsoever shall the Seller be liable in contract, tort or otherwise howsoever arising for any claim, damage, loss or costs in respect of:- (a) any loss of profit; (b) loss of use of money; (c) loss of anticipated savings; (d) loss of business; (e) loss of opportunity; (f) loss of goodwill; (g) loss of reputation; (h) loss of data; (i) any wasted expenditure; or (j) any indirect or consequential loss or damage howsoever caused. For the avoidance of doubt, the Sub-clauses in this Clause 6.2 are intended by the Parties to be severable.

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- 6.3 Without prejudice to Clause 6.2, the Seller's maximum aggregate liability for all claims made by the Buyer in relation to the Agreement shall not exceed the contract price for the Products, and the Buyer agrees to insure adequately to cover claims in excess of such amount.
- 6.4 Prices are quoted by the Seller on the basis of the limitations of liability set out in the Agreement. The Buyer shall be entitled to request the Seller to agree a higher limit of liability and the Seller may (at its discretion) then quote a revised price taking account of any increased insurance premium to be borne by the Seller.
- 6.5 The Buyer shall indemnify the Seller against all losses, costs, claims, damages, expenses and liabilities in respect of or arising out of any injury, loss or damage whatsoever suffered by or occasioned to any person arising out of or in connection with the supply by the Seller of the Products or any act or omission of the Buyer in its performance of its obligations under the Agreement, except where any such claim or loss is a direct result of any negligent act or default of the Seller.
- 6.6 Clause 44 of NL 17 E shall not apply.

7. INSURANCE

The Seller shall maintain in force, with a reputable insurance company, appropriate insurances to cover liability that may arise under or in connection with the Agreement, and shall, on the Buyer's request, furnish to the Buyer a letter of verification evidencing the existence of such cover

8. INTELLECTUAL PROPERTY RIGHTS

All Intellectual Property Rights in the Products or promotional literature including; drawings, specifications and other data in connection with the Products shall, at all times remain vested in the Seller (or the Seller affiliates as appropriate) and the Buyer shall not knowingly or negligently cause or permit anything which may damage or endanger such Intellectual Property Rights of the Seller or the Seller's title to such Intellectual Property Rights or allow others to do so.

9. LIABILITY FOR INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS

- 9.1 Subject to Clause 9.3 of these General Conditions, if the Buyer is subject to a claim or threatened with any action alleging that the Product in the form supplied infringe any third party Intellectual Property Rights then provided that the Buyer promptly informs and fully co-operates with the Seller and if requested allows the Seller the conduct and defence thereof the Seller will indemnify the Buyer against any costs claims damages liabilities and expenses incurred by the Buyer as a result of such proceedings.
- 9.2 The Seller shall have the option at its own expense either to modify any infringing Product so that they do not infringe or to replace the Product with a non-infringing substitute or to repurchase the Product from the Buyer at the price paid by the Buyer less an allowance for the use made thereof.
- 9.3 The Seller shall have no liability in respect of claims for infringement of third party Intellectual Property Rights arising from: (i) the manufacture or supply of the Products to the Buyer's instructions or in accordance with designs plans or specifications given by the Buyer; (ii) the Product being used elsewhere than in Denmark, Finland, Norway, Sweden or in any other country specifically agreed by the parties; (iii) the Product being used in a manner deviating from that agreed or in a way that the Seller should not have foreseen; or (iv) the Product being used together with equipment or software not supplied by the Seller and the Buyer shall indemnify the Seller against all losses damages expenses costs or other liability arising from such claims.

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9.4 Clauses 38 – 42 of NL 17 E shall not apply.

10. CONFIDENTIALITY

The parties shall maintain the obligation of secrecy and confidentiality in the delivery of their obligations under the Agreement and the General Conditions.

11. WARRANTY RETURNS AND LIABILITY FOR DEFECTS

11.1 In case of returns of Products the Buyer must contact the Seller's local order department and obtain return number and conditions. The Seller will not handle returns without a return number.

11.2 Notwithstanding Clause 29 of NL 17 E and unless otherwise agreed by the Parties in writing, the remedial work of the defective part or the defective goods shall be conducted on the Seller's premises.

11.3 Notwithstanding Clause 31 of NL 17 E and unless otherwise agreed by the Parties in writing, transport in connection with the repair or replacement shall be as per Clause 3 of these General Conditions.

11.4 If the Seller fails to fulfil his obligations under Clause 29 of NL 17 E within a reasonable time, the Buyer may by written notice require him to do so within a final reasonable period. If the Seller fails to fulfil his obligations within that period, the Buyer may, if the defect is substantial, terminate the contract by written notice to the Seller. In case of termination, the Buyer shall be entitled to compensation for the loss he has suffered. The compensation shall not, however, exceed 20 per cent of the agreed purchase price.

11.5 Regardless of the provisions of Clauses 24-34 of NL 17 E and Clause 11.4 of these General Conditions, the Seller shall have no liability for defects in any part of the Product for more than one year from the end of the liability period referred to in Clause 26 of NL 17 E.

11.6 The Seller shall have no liability for defects save as stipulated in Clauses 24 – 34 of NL 17 E and Clauses 11.4 and 11.5 of these General Conditions. This applies to any loss the defect may cause, such as loss of production, loss of profit and other consequential economic loss. This limitation of the Seller's liability shall not apply, however, if he has been guilty of gross negligence.

11.7 Clause 35 – 37 of NL 17 E shall not apply.

12. ASSIGNMENT

Neither party may assign or transfer or novate any of its rights, benefits or obligations under the Agreement without the prior written consent of the other party, provided that the Seller may always assign, transfer or novate its rights and obligations under the Agreement to another member of its group.

13. COMPLIANCE

13.1 Subject to Clause 3 (Delivery), the Buyer shall be solely responsible for obtaining any and all necessary import or export licences or permits necessary for the delivery to the Buyer, and the Buyer shall be responsible for any and all customs duties, clearance charges, taxes, brokers' fees and other amounts payable in connection with the importation, exportation and/or delivery of the Products.

13.2 The Buyer agrees to comply fully, at its own expense, with all applicable import and export laws, restrictions, national security controls and regulations of any applicable local law or regulation.

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- 13.3 The Buyer agrees and undertakes that:
- (a) it shall comply with the terms of any export licence, licence exception, or general licence granted or approved by any competent governmental authority, and that it shall not re-export or transmit any Products directly or indirectly to any person, entity or into any territory not covered by such export licence, licence exception, or general licence; and
 - (b) (regardless of any prior export licence, licence exception or general licence), the Products will not be supplied directly or indirectly to any person or entity or into any territory which is embargoed, prohibited, debarred or otherwise the subject of sanctions from the United Kingdom, the European Union, the United States of America or the territory where the Buyer is located.
- 13.4 The Buyer shall comply with all relevant anti-corruption legislation in connection with the Agreement and the Seller's business and shall immediately notify the Seller if it discovers or suspects that any of its officers, directors, employees or representatives are acting or have acted in a way which violates such legislation.
- 13.5 The Buyer acknowledges that the Seller has a code of responsible business (the "IMI Code") which is available at www.imiplc.com and the Buyer shall at all times, conduct, and procure that its officers, directors, employees and/or representatives conduct business ethically and in accordance with the relevant provisions of the IMI Code. This Clause shall apply whether or not the Buyer is acting pursuant to the Agreement or its relationship with the Seller or any companies within the Seller's group of companies.
- 13.6 The Buyer acknowledges that in placing an order with the Seller for Products under these terms and conditions that it has read and accepted the Seller's privacy policy which is available at <https://norgren.com/en/legal/privacy> (as may be updated by the Seller from time to time) ("**Privacy Policy**") and the Buyer understands that where personal information of Buyer's employees, directors or other individuals acting on behalf of Buyer, is processed by the Seller to fulfil the requirements of these terms and conditions the Seller will process such personal information as set out in the Privacy Policy. The Buyer warrants that it complies with applicable data protection laws and has the right, legal authority and required consents (if applicable) to enable the Seller to process such personal information as set out in the Privacy Policy. Buyer shall inform all impacted individuals of the processing pursuant to these terms and conditions and provide them with a copy of the Privacy Policy.
- 13.7 The Buyer agrees that it must be able to demonstrate its compliance with the requirements referred to in this Clause 13 at the request of and to the satisfaction of the Seller which includes, but is not limited to, the Seller having the right to inspect any site involved in work for the Seller. If the Buyer fails to comply with this Clause 13, the Seller shall be entitled, in its sole discretion, to terminate the Agreement and any other agreements between the Buyer and the Seller without penalty to the Seller, but with obligations for the Buyer to remedy any damages suffered by the Seller as a result of such termination or breach of contract.

14. ENTIRE AGREEMENT AND AMENDMENTS

The Agreement and all Annexes thereto constitutes the entire agreement between the Parties with respect to the subject matter of the Agreement. All Annexes referred to in the Agreement are intended to be and are hereby specifically incorporated into and made a part of this Agreement. No modification will be effective unless in writing and signed by authorized representatives of both Parties.

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15. DISPUTES

Notwithstanding any provisions of NL 17 E to the contrary, the Seller reserves the right to pursue any claim and/or dispute through the Courts of the Seller's country.

16. GENERAL

- 16.1 No waiver of or delay or failure by the Seller to exercise any rights or remedies shall prejudice or preclude any future exercise thereof.
- 16.2 If any provision of the Agreement shall be held invalid or unenforceable in whole or in part then the unaffected provision (or part of the provision, as the case may be) shall remain in full force and effect. Headings appear for convenience only and shall not affect the construction of these conditions.
- 16.3 Nothing in the Agreement shall create a partnership, agency or relationship of employment between the Parties.

17. MISCELLANEOUS

- 17.1 The second sentence of Clause 1 of NL 17 E shall not apply.

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NORGREN[®]

Sub Annex A of Annex 1

NL 17 E