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 enter into a contract with the Company under 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) the price quoted (including on the Website) for goods shall be that price charged by the Company at the date of delivery plus the amount of any tax which the Company requires to pay on account of an excise, or charges which may be established or levied by or under any Act of Parliament of any state or territory, or on the importation of such goods from any country or part thereof, or on the manufacture, use, sale of delivery or disposal of such goods.
(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’ prices or freight, freighting and handling charges, insurance, 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 matters or any of the aforesaid expenses.
(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.
(iii) Any variation of the rate in excess of 5% will be for account or benefit of the Purchaser.
(iv) Reductions in any costs may be credited to the Purchaser at the Company’s discretion.
(v) 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” have the meanings given to them in the A New Tax System (Goods and Services Tax) Act 1999 (GST Act). A “Supplier” means any person treated by the GST Act as making a Supply under this Agreement.

(b) Consideration 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 payable price for the Supply at the time of the Receipt by the Supplier to the 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 expenses, costs or outlays (“Reimbursable Expenses”) 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 is a supply of services to the Other Party subject to the recipient receiving a valid Tax Invoice in respect of the Supply at or before the time of payment.

(i) 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.

(ii) Reimbursement of Expenses

(a) If this Agreement requires a party (the “First Party”) to pay for, reimburse, set off or contribute to any expenses, costs or outlays (“Reimbursable Expenses”) 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 is a supply of services to the Other Party subject to the recipient receiving a valid Tax Invoice in respect of the Reimbursable Expenses (“Net Amount”); and
(b) 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’s premises. Unless otherwise expressly specified. Any quoted time for delivery to the Purchaser shall be deemed to be an estimate only and no claim shall lie against the Company for failing to deliver the goods within such estimated time. If the purchaser delays the delivery for reasons not attributable to the Company then title 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 accepted 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 agreement to the return of the goods;
(iii) the goods are in “as new” conditions;
(iv) all related dispatch charges have been paid; and
(v) the documents 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 property in the goods shall not pass to the Company 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 Company must keep all goods stored in accordance with sub-clause (b) insured against theft, damage and destruction (and if the Company 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 party to party prior to party to party prior to any prior payment in full of the purchase price to the Company PROVIDED THAT where the Purchaser is paid for the goods by the third party 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 at any such time.
(e) The Company and the Purchaser agree that the provisions of this clause apply notwithstanding the terms of any contract between the Purchaser and a third party.
(f) For the purpose of the Company’s entrance to any such premises, the production 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 therefrom.

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 repossess possession of any of the goods without any time of notice to the Purchaser, and shall remove the goods and the Company’s property in any such goods from any premises whether or not the removing or retaking thereof shall cause any damage or injury to the Purchasers 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.

(b) For the purpose of the Company’s entrance to any such premises, the production 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 therefrom.

(c) If the Company procures the removal of the goods from the Purchaser’s premises the Purchaser, to the fullest extent of the meanings given to them in the A New Tax System (Goods and Services Tax) Act 1999 (GST Act), shall hold a proportion of the third party’s payment equal to the amount owing by the Purchaser to 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 recovering, recovering, re-taking 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 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 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 right to receive payment of all sums due hereunder or to exercise any of its rights hereafter in reference to or upon the continuation after any such waiver of any state of affairs of the subject of such waiver.

11. LICENCE

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 is 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 date of invoice 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 as a consequence of the PPSA;

"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) these 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 a term in clause 21.1, 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) an undertaking, assertion or representation in relation to the goods is capable of being read down; it shall be read down to the extent necessary to render it capable of being read down;

(ii) an undertaking, assertion or representation is incapable of being read down; it shall be deemed to be incapable of being read down 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.

20.1 MINIMUM CHARGE

The Company reserves the right to increase the amount charged on any invoice up to the maximum 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 arrangements exist, this will be stated on the Website.
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 by written consent.  
(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)(d) (contents of statement of account after disposal);  
   (vii) 132(4) (statement of account if no disposal);  
   (viii) 135 (notice of retention);  
   (ix) 142 (redemption of collateral); and  
   (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 completed 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 willful 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 if damages and losses are caused by the product not being handled, installed, operated and maintained properly by the Purchaser/end-user according specifications and manuals. Company's Indemnities shall be limited to the liabilities attributable to its acts and omissions."

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, 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.  

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 personal 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.