

NORGALV LIMITED
STANDARD TERMS AND CONDITIONS

1. INTERPRETATION

- 1.1 "Customer" means any person or persons at whose behalf the Supplier undertakes to supply any Goods, do any business or provide any advice or service.
- 1.2 "Supplier" means Norgalv Limited supplying the Goods.
- 1.3 "Goods" means any materials, products and/or services supplied to the Customer by the Supplier.
- 1.4 "Agreement/Contract" shall mean these standard terms of agreement, and such other terms and conditions of agreement as may be agreed in writing between the parties.
- 1.5 "Party/Parties" means any one of Supplier or Customer and/or both as the context requires.

2. TERMS AND CONDITIONS TO PREVAIL

These standard terms of agreement shall be deemed to be incorporated in and shall apply consistently to every agreement entered into between the Supplier and the Customer. To the extent of any inconsistency or conflict between this Contract and any Customer Contract, purchase order or request for proposal, the terms of this Contract shall prevail.

3. NO VARIATIONS OR AMENDMENTS

- 3.1 Subject to clause 1.4 above this Agreement constitutes the whole agreement between the Customer and the Supplier and no amendment or consensual cancellation and no extension of time, waiver or relations of any of the provisions or terms of this Agreement shall be binding unless recorded in writing and signed by the authorized representative of the Supplier.
- 3.2 No extension of time or waiver or relaxation of any of the provisions or terms of this agreement, bill of exchange or any other document shall operate as an estoppel against the Supplier in respect of its rights under the Agreement nor shall it preclude the Supplier from exercising its rights strictly in accordance with this Agreement.
- 3.3 The Supplier shall not be bound by an express or implied term, representation, warranty, promise or the like not recorded herein.

4. QUOTATIONS

- 4.1 Any quotation given shall not be an offer by the Supplier to sell the Goods, but constitute an invitation by the Supplier to the Customer to do business with the Supplier.
- 4.2 A quotation may be revoked at any time by the Supplier. In the event of the Supplier not accepting the Customer's order within 10 working days from the date thereof, the order shall be deemed to have been withdrawn.
- 4.3 A contract will only come into force once the Supplier accepts the Customer's order or if the Supplier supplies, or tenders to supply the Goods in question to the Customer.
- 4.4 The quotation is based on rates of exchange, freight charges, insurance, railage, costs of labour, materials, import duty, taxes and other charges ruling at the date of the quotation. Any variations occurring subsequent to the date of the quotation in any of the aforesaid rates or charges shall entitle the Supplier to vary the amount of the quotation accordingly.

5. PURCHASE PRICE AND PAYMENT

- 5.1a For cash Customers on the date of receipt of Goods.
- 5.1b All amounts are due and payable on the date of the invoice, except that if credit is provided, invoices of Supplier are due and payable 30 days from date of each invoice. All payments shall be made without any deduction, set off, counterclaim or abatement. Payment for purchases of Goods is due upon delivery unless otherwise approved in writing by Supplier. Any amount which is not paid when due shall bear interest at the rate of 2.0% per month compounded monthly (26.8% annually) until the date of actual payment. In the event that hold backs are negotiated as part of the Contract, the total amount of applicable taxes including HST, GST and/or PST will be due with first invoice.
- 5.2 If the price stated in the quotation of the Supplier is subject to a discount, then the discount will only be allowed if payment is made timeously on or before the due date for payment. Should any payment due by the Customer to the Supplier not be made on due date or should the Customer commit any other breach of this agreement, or be placed in liquidation or commit any act of insolvency, then the full balance owing to the Supplier by the Customer, as at the date thereof, from whatsoever cause arising, shall immediately become due and payable without notice. The Supplier in its sole discretion shall furthermore have the right to cancel the agreement between the Supplier and the Customer and refuse to deliver any further Goods to the Customer. In such event the Customer shall have no claim or claims of whatsoever nature or kind against the Supplier arising out of such cancellation or the refusal of the Supplier to deliver any further Goods to the Customer.
- 5.3 Unless otherwise stipulated in the agreement, the contract price is based on "ex works delivery", exclusive of the costs of packaging, freight, off-loading and insurance.
- 5.4 Any promissory notes and/or bills of exchange shall be deemed to have been accepted by the Supplier without prejudice to the Supplier's claims or rights against the Customer in respect of the original cause of debt and the Customer hereby waives presentment notice of dishonour and protest in respect of any promissory note or bill of exchange of which it is an endorser, surety or other party and of which the Supplier may become the holder.
- 5.5 The Customer shall not be discharged from its obligation to pay the contract price until the Supplier actually recovers payment in full, notwithstanding the means and method of payment agreed upon by the parties.
- 5.6 Except as expressly set out in the Contract, all amounts are stated in and shall be paid in Canadian Dollars.
- 5.7 Supplier reserves the right (regardless of any contrary direction) to apply any monies received by it on the Customer's account to such invoices and accounts of the Customer and as to principal or interest as Supplier deems fit.
- 5.8 The Customer has no right to withhold payment for any reason whatsoever. The Customer shall not be entitled to set-off any amounts, which may be claimed by the Customer from the Supplier against any amounts owing by the Customer to the Supplier.
- 5.9 The Customer agrees to indemnify and hold harmless the Supplier from and against any and all losses, liabilities, claims, costs and expenses whatsoever (including legal expenses on a solicitor and his own client basis) suffered or incurred by the Supplier in the collection (including execution) of any monies due to Supplier or in enforcing any of Supplier's rights under the Contract.
- 5.10 The Customer grants, mortgages and assigns to Supplier a security interest in all of the Customer's present and after acquired personal property, and all proceeds thereof, as security for the due payment and satisfaction of any and all obligations and liabilities whatsoever, liquidated or unliquidated, of the Customer to Supplier, present or future, direct or indirect and howsoever arising (collectively, the "Secured Obligations"). For purposes of creating security under laws of the Province of Ontario, and as further security for the payment and performance in full of the Secured Obligations, the Customer hereby hypothecates in favour of Supplier, the universality of all of its movable property, present and future, corporeal and incorporeal, of whatever nature and wherever situated for an amount equal to 125% of the amount of the credit limit requested and set forth in any Supplier credit application entered into by the Customer, with interest at the rate of 25% per annum from the date hereof, compounded annually. Whenever Supplier performs any work or service or sells or installs any attachment, improvement or creation to any real or immovable property of the Customer, the Customer agrees to execute and deliver in favour of Supplier, within ten (10) business days upon request from Supplier, a security agreement, mortgage, and/or deed of hypothec in respect of such real or immovable property and such other deeds, acts, instruments, documents and other agreements as may be required by Supplier in order to grant to Supplier a valid and enforceable security interest, charge and/or hypothec over such real or immovable property, in each case upon such terms and conditions as are satisfactory to Supplier. Supplier shall be entitled to register financing statements or publish registration forms with respect to any and all security interests or hypothecs granted by the Customer in favour of Supplier. To the extent permitted by applicable law, the Customer waives the right to be notified of registration of any financing statements or other public filings. The provision of Work is subject to Supplier's lien rights under the applicable lien legislation in the province or territory in which the Work is performed or provided.
- 5.11 Upon default by the Customer or in the event that Supplier at any time determines that its credit position is in any manner insecure, inadequate or in jeopardy, Supplier may, without limiting its other remedies hereunder or at law (and notwithstanding any existing contracts or commitments to the Customer including a commenced delivery or performance): (1) deem all amounts owing by the Customer to Supplier to be immediately due and payable, (2) take possession of any Goods supplied or otherwise enforce its security against the Customer, (3) refuse, stop, cease or suspend further sales, deliveries or services to the Customer including Goods in transit, and/or (4) impose prepayments or request other forms of security as Supplier deems fit.
- 5.12 If Supplier suspends its performance under this Section, then the completion, delivery and other dates contemplated under the Contract shall be adjusted as reasonably required to accommodate the effects of such suspension of performance, and the Customer shall pay Supplier additional costs reasonably and necessarily incurred by Supplier.

6. RISK

The risk in and to the Goods shall pass to the Customer from the moment that it or its transporter signs for the Goods which are loaded onto the delivery vehicle, or shall be subject to Incoterms 2000 for Goods destined for export.

7. DELIVERY

7.1 Any claims for shortages or damage to the Goods must be made in writing by the Customer within ten (10) days of the Goods being received by the Customer, failing which the Supplier shall be excused from all liability in respect of such claims.

7.2 Any delivery dated indicated by the Supplier shall not bind the Supplier to effect delivery on such date. The Customer shall accept delivery when it is tendered and shall not be entitled to resile from the agreement, withhold or defer payment, reduce the price or be entitled to any other remedy against the Supplier on account of delays in effecting delivery.

7.3 The Customer shall be liable for all costs occasioned by its failure or refusal to take timely delivery of the Goods from the Supplier.

7.4 The signature of any employee of the Customer on any official delivery note, invoice, waybill of the Supplier or the similar paper of any authorized independent carrier of the Supplier shall constitute good and sufficient proof of delivery of the Goods to the Customer.

8. OWNERSHIP

Notwithstanding delivery of the Goods by the Supplier, or the use of the Goods after delivery, the Goods shall remain the property of the Supplier until it has received payment in full of the contract price.

9. WARRANTIES & INDEMNITIES

9.1 No warranties, guarantees or representations, express or implied whether by law, contract or otherwise which are not set forth in this agreement, shall be binding on the Supplier. Supplier warrants that the Goods are of good workmanship, are free of defects in manufacture and material and in conformance with Supplier's specifications as expressly set out in the relevant contract or purchase order. The Supplier shall not be liable for any inaccuracies in any drawing, specifications or other information supplied by the Customer.

9.2 The Supplier shall under no circumstances be liable for any special, consequential, or indirect damages or losses.

9.3 The Supplier shall under no circumstances (except if gross negligence is proven) become liable to the Customer for any direct damages or losses sustained by the Customer, which are alleged to have been sustained by the Customer as a result of, but not limited to:

9.3.1 Any delay or failure in the manufacture or delivery of the Goods;

9.3.2 Defective or incorrect materials, workmanship, design or specification;

9.4 Supplier's total liability under this Warranty with respect to any Goods, whether through repair or replacement of the Goods or refund of the purchase price thereof, is limited to the amount of the purchase price actually received by Supplier from the Customer for the defective Goods.

The Warranty set out herein is the only warranty applicable to the Goods. SUPPLIER EXPRESSLY DISCLAIMS, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL OTHER REPRESENTATIONS, WARRANTIES, COVENANTS, CONDITIONS, GUARANTEES OR SIMILAR OBLIGATIONS, WHETHER EXPRESS OR IMPLIED BY FACT, BY LAW (INCLUDING ANY STATUTE OR REGULATION), BY CUSTOM OR TRADE USAGE OR BY ANY COURSE OF DEALING, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF QUALITY, MERCHANTABILITY, FITNESS FOR PURPOSE AND FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR OTHERWISE, ALL OF WHICH ARE EXCLUDED AND ARE INAPPLICABLE.

The remedies set out herein are the Customer's sole remedies, and are Supplier's only obligations (whether based on breach of contract, warranty, indemnity or statutory duty or in tort or otherwise), arising out of or in connection with defective or deficient Goods.

No suit or action on this Warranty for the recovery of any claim may be sustained in any court of law or equity unless the Customer has complied with all the requirements of this Warranty and unless such suit or action is commenced within three (3) months from the date on which the Customer originally made such claim under this Warranty.

9.5 Returns, if accepted by the Supplier at its sole discretion and upon such terms as it may prescribe, shall be credited in full, less a minimum of 10% (ten percent) as a handling charge, subject to the Goods being within their specified shelf life and in a marketable condition and provided further that the purchaser shall be liable for all costs of delivery to the Supplier's designated premises.

9.6 In the event that the Customer provides any specifications or designs to the Supplier and requests the Goods to be manufactured according to such designs or specifications, then the Customer hereby indemnifies the Supplier against all claims and expenses of whatsoever nature and description arising from the alleged or actual infringement of any Patents, Trade Marks, Designs or Copyrights occasioned by the Supplier's performance.

9.7 The Customer shall keep confidential and shall not use for any purpose all drawings and designs supplied by the Supplier, and the Customer hereby indemnifies the Supplier against any loss suffered by the Supplier as a result of the breach of this clause.

9.8 The parties agree that the Supplier shall have no liability in respect of any loss or damage (direct, indirect or consequential) arising out of any Patent or Trade Mark relating to any of the Goods sold being infringed, cancelled, breached or otherwise set aside or declared invalid if the Supplier is not the original manufacturer of the Goods.

10. BREACH

10.1 If either party (the "defaulting party") breaches any of the terms and conditions hereof, and remains in breach after receipt of 14 (fourteen) days' written notice requesting remedy of the breach, or commits any act of insolvency, or endeavors to compromise generally with its creditors, or is placed under provisional or final liquidation, or judicial management, or the estate is voluntarily surrendered, then in such event the other party shall have the right, without prejudice to any of its other rights, to cancel this agreement and any other agreements concluded with the defaulting party.

10.2 The Customer agrees that the amount due and payable to the Supplier shall be determined and proven by a certificate issued by the Supplier and signed on its behalf by any person duly authorized, which authority need not be proven, such certificate being binding and prima facie proof of the indebtedness of the Customer. Such certificates shall be sufficient for purposes of judgement, provisional sentence or any other legal proceedings.

11. GOVERNING LAW

11.1 The Contract, including these terms, shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein (but without giving consideration to any conflict of law rules). Supplier and the Customer agree that the courts of Ontario have jurisdiction to entertain any legal proceedings in respect of the Contract, including these terms, and Supplier and the Customer hereby irrevocably consent to and attorn to the non-exclusive jurisdiction of such courts. Supplier may take proceedings for enforcement in any jurisdiction. The International Sale of Goods Act and the United Nations Convention on Contracts for The International Sale of Goods do not apply to the Contract. For purposes of any assets located or deemed located in the Province of Quebec and for all other purposes pursuant to which the interpretation or construction of the Contract may be subject to the laws of or a court or tribunal exercising jurisdiction in the Province of Quebec, (a) "personal property" shall include "movable property", (b) "real property" shall include "immovable property", (c) "security interest", "mortgage" and "lien" shall include a "hypothec", "right of retention", "prior claim" and a resolatory clause, (d) all references to filing, perfection, priority, remedies, recording or registering financing statements shall include publication under the Civil Code of Quebec, (e) "Goods" shall include "corporeal movable property" other than chattel paper, documents of title, instruments, money and securities, and (f) "accounts" shall include "claims".

12. COSTS

Either party shall be entitled to recover from the other party all costs incurred by it in enforcing any rights that it has hereunder, including collection charges, costs on an attorney and own client scale, costs of counsel as on brief (whether incurred prior to or during the institution of legal proceedings), or if judgment has been granted, in connection with the satisfaction or enforcement of such judgment.

13. EXPORT COMPLIANCE

13.1 Goods supplied pursuant to a Contract may be subject to laws and regulations governing the export of Goods and/or technology. The Customer shall not ship or divert any of the Goods, or any technical information relating thereto, to any country outside of Canada in violation of any laws. If Goods supplied hereunder are to be exported, then Supplier's performance of its obligations hereunder is subject to and conditional upon the Customer obtaining the necessary approvals, licenses and permits required by law in relation to such export. The Customer shall indemnify and hold harmless the Supplier Parties from and against any and all losses, liabilities, claims, costs and expenses whatsoever (including legal expenses on a solicitor and his own client basis) suffered or incurred by any of the Parties as a result of any breach of this provision by the Customer.

14. FORCE MAJEURE

Supplier shall not be considered in default or be liable for any failure to perform any obligation under the Contract in the event and to the extent that such failure is caused by a condition of force majeure. A condition of force majeure is an event beyond the reasonable control of Supplier which prevents or impedes the performance of the Contract by Supplier, including without limitation the following: change in law, war, revolution, riots, insurrection, civil commotion, invasion, armed conflict, hostilities, acts of terrorism, epidemics, sabotage, theft, explosions, fires, earthquakes, floods, other natural physical disaster, embargo, prohibition on import and exportation of materials or equipment or services, contamination, acts of God, hazardous properties, transportation blockages, electricity supply interruptions and power failures, strikes, work stoppages, slowdowns or other labour actions and failure of government to issue permits or approvals. Supplier shall give notice in writing to the Customer of the occurrence of any force majeure event which causes or is likely to cause any failure by Supplier to perform any obligation under the Contract. Such notice shall include the nature of the event, the expected duration and any anticipated impact on performance of the Contract, including any cost impacts.

15. ASSIGNMENT

The Contract shall be binding upon and inure to the benefit of the Parties and their successors and permitted assigns. No assignment of the Contract, in whole or in part, or of monies due or to become due hereunder, shall be made by the Customer without the prior written consent of Supplier, and if such consent is provided the Customer shall remain liable, jointly and severally with the assignee, for the obligations of the Customer under the Contract. Supplier in its sole discretion may assign the Contract to any of its affiliates or related entities or to any purchaser of all or substantially all of the assets of Supplier, and Supplier may subcontract its rights or any portion of its responsibility under the Contract to any of its affiliates or related entities or any third party.

16. INTELLECTUAL PROPERTY

Supplier retains all ownership of its intellectual property of every nature and kind and of all materials prepared or developed by Supplier or its employees, including without limitation all trademarks, patents, copyright, industrial design or other intellectual property rights related to the Goods and all specifications, plans, designs, concepts and other proprietary information related to the Goods. Under no circumstance shall the Customer reverse engineer or design the Goods for the Customer's use, without prior written permission from Supplier.

17. CONFIDENTIAL INFORMATION

Unless otherwise specified in the Contract, all information including general business information, financial data, technical data, reports, photographs, electronic files, specifications, software, drawings, tools, dies, patterns, plans, methods or other intellectual property supplied, disclosed, conceived or prepared by Supplier in connection with the Contract, whether disclosed verbally, in writing, in electronic or other form, shall be considered confidential, shall not, at any time, be disclosed to a third party by the Customer without the written consent of Supplier and shall be used by the Customer solely for the purpose of using and maintaining the Goods and the products or projects to which the Goods relate.

18. GENERAL

18.1 The headings of these Terms are solely for convenience of reference and do not affect the interpretation thereof or define, limit or construe the contents of any provision of these terms.

18.2 Notwithstanding any rule or maxim of construction to the contrary, any ambiguity or uncertainty will not be construed against any Party by reason of the authorship of any provision hereof.

18.3 Any notice, request, or other document to be given under the Contract shall be in writing and sent to Supplier or the Customer, as applicable, at its address as set out in the Contract.

18.4 No waiver, alteration, revision or modification of the Contract shall be binding on either Party unless made in writing and signed by each of the Parties.

18.5 The relationship between the Parties shall be that of independent contractors (including for purposes of the Income Tax Act (Canada)) and no partnership, agency, joint venture or any other relationship shall arise pursuant to the Contract.

18.6 All remedies set out in the Contract are cumulative and in addition to any and all other statutory, common law and equitable remedies available to the parties.

18.7 If any provision of the Contract is found to be invalid or unenforceable, neither the validity nor enforceability of any other provision of the Contract shall be affected or impaired. The invalid or unenforceable provision shall be severed and replaced with a valid or enforceable provision that accomplishes the same intent to the greatest extent possible.

18.8 The delay or failure of a Party to exercise a right or remedy under the Contract shall not operate as a waiver of that right or remedy. No single or partial exercise of any right or remedy precludes subsequent exercise of that or any other right or remedy.

18.9 The completion, cancellation or termination of the Contract shall not release or relieve either of the Parties from any obligation or liability under the Contract which expressly or by their nature survive such completion, cancellation or termination, including, without limitation, all obligations of the Customer to pay amounts owed to Supplier and all rights of Supplier in respect thereof, all indemnities in favour of Supplier, all limitations of liabilities in favour of Supplier, and all obligations of confidentiality contained herein.

18.10 Each Party agrees from time to time, subsequent to the date hereof, to execute and deliver or cause to be executed and delivered to the others of them such instruments or further assurances as may, in the reasonable opinion of any other of them, be necessary or desirable to give effect to the provisions of the Contract.

18.11 The Parties confirm that it is their wish that this Contract and any other document executed in connection with the transactions contemplated herein be drawn up in the English language only. Les parties aux présentes ont expressément exigé que la présente convention et tous les autres contrats, documents ou avis qui y sont afférents soient rédigés en langue anglaise.