

Norco Co-operative Limited



Tel +61 02 6627 8000

Fax +61 02 6621 9673

Web www.norco.com.au

Street Address "Windmill Grove" 107 Wilson Street, South Lismore NSW 2480

Postal Address PO Box 3107, Lismore DC NSW 2480

ABN 17 009 717 417 **ARBN** 009 717 417

STANDARD TRADING CONDITIONS

In consideration of Norco Co-operative Limited ("Norco") supplying goods and/or services to, or at the direction of, the Customer, the parties agree as follows:-

1. "Customer" refers to the Applicant described on the Application Details page of this document.
2. "Statement" means any document setting out the amount due by the Customer to Norco.
3. "Goods" shall include goods, products, materials and services supplied by Norco.
4. Goods purchased must be paid for by the earlier of the due date as shown on your statement and the date which is 7 days after the date of your statement.
5. If the Customer fails to pay for any Goods in accordance with the due date on any Statement, then interest shall accrue on any unpaid amount at the rate of 1.25% per month from the date that the amount became due until the date the amount is paid. The Customer's Credit Limit will be adjusted by Norco at any time and without further notification to the Customer if deemed necessary.
6. Where the Customer is a Company, then satisfactory Guarantor/s (as approved by Norco) must execute the Guarantee set out on page 3 of this document before any credit can be approved. In the event that no Guarantee is executed, then the persons signing this application for or on behalf of the Company Customer shall be personally liable in the same terms as that set out in the Guarantee on page 3 of this document.
7. Norco may at any time and for any reason withdraw any credit facilities when an account is overdue. Upon any such withdrawal, the balance of any Statement unpaid will become immediately due and payable.. If an amount payable by a Customer to Norco or its subsidiaries for Goods is due but unpaid, Norco or its subsidiaries may withhold payment of any amount that is payable by Norco or its subsidiaries to the Customer until the Customer has made payment of the amount that it owes to Norco or its subsidiaries. Norco may set off any amount that is payable by the Customer to Norco or its subsidiaries against and in full and final satisfaction of any amount that is payable by Norco to the Customer. Customers who wish to re-open their credit account will have to re-apply.
8. Title
 - (a) Notwithstanding the delivery of the Goods or part thereof the Goods remain the sole and absolute property of Norco as full legal and equitable owner until such time as the Customer shall have paid to Norco the full purchase price together with the full price of any other Goods the subject of any other agreement with Norco.
 - (b) The Customer acknowledges that he receives possession of and holds Goods delivered by Norco solely as bailee for Norco until such time as the full price thereof is paid to Norco together with the full price of any other Goods then the subject of any other agreement with Norco and that a Fiduciary relationship exists between Norco and the Customer.
 - (c) Until such time as the Customer becomes the owner of the Goods, it will;
 - (i) store them on the premises separately;
 - (ii) ensure that the Goods are kept in good and serviceable condition;
 - (iii) secure the Goods from risk, damage and theft; and
 - (iv) keep the Goods fully insured against such risks that are usual or common to insure against in a business of a similar nature to that of the Customer.
 - (d)
 - (i) Until such time as the Customer becomes the owner of the Goods, Norco authorises the Customer to sell the Goods as its fiduciary agent. However, the Customer shall not represent to any third parties that it is acting in any way for Norco. Norco will not be bound by any agreements with third parties to which the Customer is a party.
 - (ii) Records shall be kept by the Customer of any Goods owned by Norco.
 - (iii) The proceeds of any sale of the Goods shall be paid into a separate account and held in trust for Norco. The Customer shall account to Norco from this fund for the full price of the Goods.
 - (iv) Where the Customer is entitled to a period of credit, but if prior to the expiration of the period of credit the Goods are sold and the proceeds of sale received the Customer shall account forthwith to Norco for the price of the Goods.
 - (v) Should the Customer become deceased, stop payment or call a meeting of its creditors or become insolvent or subject to the bankruptcy laws or being a company calls a meeting for the purpose of or to go into liquidation or has a winding-up petition presented against it or has a receiver or administrator appointed, Norco may at its option notwithstanding its waiver of such default or failure and without prejudice to its other rights under this agreement suspend or cancel this agreement or require payment in cash before or on delivery or tender of Goods or documents notwithstanding terms of payment previously specified or may repossess and take over the Goods and dispose of the same in its own interest without prejudice to any claim it may have for damages for any loss resulting from such resale.
 - (e) In the event that the Customer uses the Goods in some manufacturing or construction process of its own or of some third party, then the Customer shall hold such part of the proceeds of such manufacturing or construction process as relates to the Goods in trust for Norco. Such part shall be deemed to equal in dollar terms to the amount owing by the Customer to Norco at the time of the receipt of such proceeds.
 - (f) If the Customer does not pay for any Goods on the due date then Norco is hereby irrevocably authorised by the Customer to enter the Customer's premises or any premises under the control of the Customer as agent of the Customer and use reasonable force to take possession of the Goods without liability for the tort of trespass, negligence or payment of any compensation to the Customer whatsoever.
 - (g) On retaking possession of the Goods Norco may elect to refund to the Customer any part payment that may have been made and to credit the Customer's account with the value of the Goods less any charge for recovery of the Goods, or to resell the Goods.
9. The person signing this Application personally and on behalf of the Applicant acknowledges that Norco has recommended that the Customer and any Guarantor/s (if applicable) obtain independent legal advice in relation to the rights and obligations under this Agreement and any Guarantees/s.
10. Delivery
 - (a) Any date quoted for delivery is an estimate only unless otherwise expressly stated by Norco in writing. The Customer shall accept and pay for Goods if and when tendered notwithstanding any failure by Norco to deliver by the quoted date. Written advice to the Customer that Goods are ready for delivery, whether in whole or in part, shall constitute tendering and the terms of payment shall apply.
 - (b) Norco reserves the right to deliver by instalments and if delivery is made by instalments the Customer shall not be entitled to terminate or cancel the agreement.
 - (c) The Customer shall take delivery of the Goods within 7 days of notification from Norco that the Goods are ready for delivery.
 - (d) Where the Customer does not accept delivery of Goods when the Goods are ready for delivery by Norco, the Customer shall be liable for additional charges at Norco's current rates for storage and/or double handling or if there is no current rate then at a rate reasonably determined by Norco.
 - (e) Any quotation containing a provision to supply Goods "ex stock" is subject to fulfilment of prior orders at the date of receipt of the Customer's order.
 - (f) If Norco quotes the price as "ex factory" Norco shall deliver the Goods at the premises of Norco.
 - (g) The Customer bears the sole responsibility for and the risk of unloading the Goods.
 - (h) Unless where otherwise expressly stated, Norco shall not be liable to any Customer or any other party for any loss or damage, including direct or indirect or consequential injury loss or damage whatsoever, by reason of any delay in delivery or non delivery of the Goods whether the same is due to the negligence of Norco or any other party, strike or any other industrial action, or any other reason whatsoever.
11. Risk

Unless otherwise agreed in writing, risk in the Goods shall pass to the Customer at the time when the Goods have been placed on the vehicle which is to effect delivery from Norco's store or warehouse or delivery to the Customer whichever is the sooner. The Goods shall remain at the Customer's risk at all times unless and until Norco retakes possession of the Goods pursuant to these terms and conditions.

12. Claims, Shortages and Defects

- (a) The Customer agrees to check all Goods received immediately upon delivery and all services immediately upon completion. The Customer will not make any claim after the expiry of 7 days from the date of delivery of the Goods or the completion of the provision of services, for shortages or improper or defective or damaged Goods or defective or improper services and Norco will not be liable for such shortages or improper or defective or damaged Goods or defective or improper services unless a written claim is made by the Customer within 7 days of the delivery of the Goods or the completion of the provision of the services.
- (b) Any claim for shortages or improper or defective or damaged Goods or defective or improper services shall be made in writing by the Customer within 7 days of the delivery of the Goods or the completion of the provision of the services.
- (c) Nothing in this agreement limits, excludes or modifies or purports to limit, exclude or modify any statutory consumer guarantees or any implied condition or warranty the exclusion of which from this agreement would contravene any statute or cause any part of these terms to be void ("Non-excludable Guarantees"). Except for any Non-excludable Guarantees, neither party makes any other representations or warranties, express or implied.
- (d) Insofar as goods or services supplied by Norco are not of a kind ordinarily acquired for personal domestic or household consumption, and unless the Customer establishes that reliance on this provision would not be fair and reasonable, the liability for breach of a condition or warranty; implied into this agreement by the Competition and Consumer Act 2010 is limited:
 - (i) in the case of goods to any one of the following as determined by the Norco ;
 - a) the replacement of the goods or the supply of equivalent goods; or
 - b) the repair of the goods; or
 - c) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - d) the payment of the cost of having the goods repaired;
 - (ii) In the case of services to any one of the following as determined by the Norco;
 - a) the supplying of the services again, or
 - b) The payment of the cost of having the services supplied again.
- (e) Subject to clause 12(d) herein, Norco shall not be liable for any loss or damage whatsoever and howsoever arising whether direct indirect or consequential or in respect of any claim whenever and however made for any loss or damage deterioration deficiency or other fault or harm in the goods manufactured, work executed or services provided by or on behalf of or in any arrangement with Norco or occasioned to the Customer or any third or other party or to his or their property or interest and whether or not due to the negligence of Norco its servants or agents or actions constituting fundamental breach of contract.

13. Security interest

The Customer creates a security interest in all of the present and after acquired personal property of the Grantor (collateral) (including anything in respect of which the Customer has a sufficient right or interest under the Act) in favour of Norco to secure the payment of any monies owing to Norco or its subsidiaries. The security interest created by this document extends not only to the collateral but also to all and any proceeds arising from any dealings with the collateral. The Customer acknowledges that Norco may register one or more financing statements in relation to its security interests under this document and that each such financing statement may be registered at any time. If permitted by the Act, the Customer waives its right under section 157 of the Act to receive notice of any verification statement relating to the registration of any such financing statement or any related financing change statement. The Customer charges all of its present and future interest and all its present and future rights in relation to any land and any other property other than personal property to which the PPS Law applies (Other Property) in favour of Norco. The Customer agrees that if demand is made by Norco, the Customer receiving such a demand will immediately execute a general security deed, mortgage or other instrument of security, or consent to a caveat, as required, and in the event that the Customer fails to do so within a reasonable time of being so requested, the Customer hereby irrevocably and by way of security, appoints any credit manager or solicitor engaged by Norco to be its true and lawful attorney and agent to execute and register such instruments and hereby ratifies and indemnifies the attorney from all claims and liabilities arising in relation to the exercise in good faith of this power of attorney. Notwithstanding any other provision in this clause and in addition thereto Norco may lodge a caveat noting the interest given by this charge on the title of any property of the Customer whenever it so wishes.

14. Service

The parties agree that service of any notices, demands, proceedings summons suits or actions ("process") upon the Customer may be effected by Norco or its solicitors sending such process by prepaid post to the address given in the Credit Application as the address of the Customer. Service shall be deemed to have been effected two business days after the posting of the process.

15. Personal Property Securities Act 2009 (Cth) ("the Act")

15.1 The Customer agrees that nothing in sections 130 or 143 of the Act will apply to the agreement between the Customer & Norco, or the security under the agreement.

15.2 The Customer agrees to waive its right to do any of the following or to receive any of the following notices or for Norco to carry out the following obligations under the following provisions of the Act:

- (a) Receive notice of removal of an accession under section 95;
- (b) Receive notice of a decision, under paragraph 117(2)(b), to enforce the security interest in the personal property in the same way as the interest in the land may be enforced under the land law under section 118.
- (c) Receive notice of any action to be taken in accordance with subsection 120(2) under section 121(4);
- (d) Object to the purchase of the collateral by the secured party under section 129;
- (e) Receive notice of disposal of collateral under section 130;
- (f) Receive a statement of account if there is disposal of collateral under section 132(1);
- (g) Receive every six months statements of account until there is disposal of collateral under section 132(4);
- (h) Receive notice of retention of collateral under section 135;
- (i) The right to redeem the collateral under section 142; and
- (j) The right to reinstate the security agreement under section 143.

15.3 The Customer and Norco agree that neither the Customer nor Norco will disclose information of the kind mentioned in subsection 275(1).

16. Jurisdiction

The parties agree that the terms and conditions applying to any credit account opened in the name of the applicant and any other agreement between Norco and the Customer shall be governed by the laws of the State of New South Wales in force for the time being and from time to time, and the parties irrevocably submit generally and unconditionally to the jurisdiction of the Courts of New South Wales in respect of claims, proceedings and matters arising out of or in respect of the said credit account or any said agreement.

17. FORCE MAJEURE

Obligation to give notice and overcome

17.1 If Norco's performance of its obligations under this agreement is affected by a Force Majeure Event Norco will:

- a) give the Customer a written notice of such Force Majeure Event; and
- b) use its reasonable endeavours to overcome promptly the adverse consequences and effects of the Force Majeure Event.

17.2 No liability or default

Subject to the Norco complying with clause 17.1, where Norco is subject to a Force Majeure Event:

- a) Norco's obligations under this agreement (other than making a payment) are suspended to the extent Norco cannot perform those obligations, for the duration of the actual delay arising out of the Force Majeure Event; and
- b) Norco is not liable, or in default under this agreement, for any failure or delay of performance of its obligations under this agreement (other than making a payment) arising out of the Force Majeure Event.

17.3 Termination

If the delay arising out of a Force Majeure Event continues for more than [thirty (30)] days, either party may terminate this agreement by giving thirty (30) days notice to the other in writing. If either party terminates this agreement under this clause:

- a) the rights and obligations of the parties under this Agreement cease; and
- b) any accrued rights or remedies of a party are not affected.

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18. Indemnity

18.1 Customer indemnification of Norco

The Customer unconditionally and irrevocably indemnifies Norco and will keep Norco indemnified and hold Norco harmless from and against all liability, costs, losses and damages (including claims arising from any action brought by any person), arising in whole or in part from:

- a) The Customer (or its personnel, agents or contractors) mishandling or misuse of, negligence or recklessness associated with, the Goods, including any use of Goods outside of its indicated uses or the manufacturer's guidelines;
- b) Any misrepresentation, misstatement or similar act by the Purchaser or its personnel, contractors or agents in relation to the Goods;
- c) Any modification to the Goods made or allowed by the Purchaser (including any modifications made by Norco in accordance with the Customer 's specifications, instructions or directions);
- d) Any loss of, damage to or destruction of the Goods, irrespective of how the loss, damage or destruction is caused;
- e) The Customer 's exercise of any of its rights or performance of any of its obligations under this agreement;
- f) Any breach or repudiation of this agreement by the Customer; and
- g) Any injury, loss or damage suffered by another to the extent attributable to any act or omission of the Customer (or its personnel, agents or contractors

18.2 General

- a) It is not necessary for Norco to incur expense or make payment before it enforces a right of indemnity under this clause 18.
- b) The indemnities in this clause 4 will not be released, discharged or affected in any other way by anything that, but for this clause 4, might do so.