



Torque Control Specialists Pty Ltd  
Trading as: Norbar Torque Tools  
Trading as: Norbar Technical  
Services  
ABN: 64 007 938 927

## **DEFINITIONS FOR 'TERMS AND CONDITIONS OF SALE' AND 'GUARANTEE AND INDEMNITY'**

'NORBAR' means Torque Control Specialists Pty Ltd trading as Norbar Torque Tools and Norbar Technical Services.

'CUSTOMER' means the customer identified in the Application for Credit.

'CONTRACT' means all contracts entered into between 'NORBAR' and the 'CUSTOMER'.

'GOODS' means the goods the subject of the Contract.

'GUARANTEED LIABILITY' means all amounts whether in respect of past, current or future debts which at any time for any reason or circumstances are payable, are owing but are not currently payable, are contingently owing or remaining unpaid or are owing at the time of the guarantor entering this agreement (or which are reasonably foreseeable as likely, after that time, to fall within any of those categories) by the Customer to Norbar in connection with the conditions of sale herein or any transaction contemplated by it, whether at law, in equity under statute or otherwise.

'GUARANTOR' means the person described herein and shall include his successors, personal representatives and permitted assigns and, if more than one, their respective successors, personal representatives and permitted assigns.



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## **TERMS AND CONDITIONS OF SALE AND GUARANTEE & INDEMNITY**

### **TERMS OF CONDITIONS OF SALE**

#### **1. All Contracts**

The Terms and Conditions of Sales shall apply to all Contracts for the supply of Good by 'NORBAR' to the 'CUSTOMER' and shall prevail over any terms and conditions contained in the Purchase Order, Invoice/Cartnote or other documents governed by the laws of South Australia.

##### **1.1 Variation of Trading Terms**

TORQUE CONTROL SPECIALISTS PTY LTD may vary these terms and conditions at any time by notice in writing to the 'CUSTOMER'

#### **2. Payment**

2.1 Payment shall be made by the 'CUSTOMER' within thirty (30) days from the date on the tax invoice for the goods purchased or services rendered.

2.2 Interest will be charged on overdue amounts at the rate of 2% per month.

2.3 Legal costs of recovery of any overdue amounts shall be recoverable by 'NORBAR' as a debt due by the 'CUSTOMER'.

##### **2.4 Appropriate Law**

Any legal action for recovery of monies owed by the customer shall be issued in an appropriate Court in the State of South Australia which Courts shall have exclusive jurisdiction to deal with such matters.

#### **3. Delivery and Risk**

3.1 Delivery shall be made by 'NORBAR' at the 'CUSTOMER'S' expense to the 'CUSTOMER'S' premises or in accordance with the 'CUSTOMER'S' instruction by such transport at 'NORBAR' discretion.

4.4 Repossession of Goods: the 'CUSTOMER'S' right to possession of Goods shall cease if the 'CUSTOMER':

5.4.1 Fail to make payments of any outstanding amount due to 'NORBAR'.

4.4.2 Commits an act of bankruptcy or is declared insolvent or, if a company, the 'CUSTOMER' does or omits to do anything which entitles the 'CUSTOMER' or any person to appoint an external administrator pursuant to any Part of Chapter 5 of the Corporation Law; or

4.4.3 Enters into some arrangement or assignment for the benefit of creditors; and 'NORBAR' shall be entitled to require the 'CUSTOMER' to return all unpaid Goods failing which 'NORBAR' is irrevocably authorised to enter the 'CUSTOMER'S' premises to repossess the Goods without notice.

#### **5. Lien**

'NORBAR' is entitled to claim a general Lien on all goods belonging to the 'CUSTOMER' for all amounts owing to 'NORBAR' by the 'CUSTOMER'.

#### **6. Warranty and Damages**

6.1 Standard Warranty imposed by statute law only applies with all other conditions, warranties and representation on the part of 'NORBAR' expressly excluded.

6.2 Damages for the breach of any warranty shall be limited to replacement on repair of the Goods of the cost of same only, at 'NORBAR' discretion, and shall not extend to any consequential damages whatsoever.

##### **6.3 Defective Raw Materials**

The Company's products are manufactured from steel or other materials which have been purchased to



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3.2 Claims will only be considered if made within 14 days of delivery and the 'CUSTOMER' shall be responsible for checking the Goods on delivery.

3.3 Risk shall pass to the 'CUSTOMER' on delivery of the Goods notwithstanding that property shall remain with 'NORBAR' until those goods are paid for.

3.4 Insurance against all risks whatsoever shall be maintained by the 'CUSTOMER' from delivery.

3.5 Time for Delivery: Dates for delivery are estimates only and subject to the availability of the Goods and 'NORBAR' shall not be liable to the 'CUSTOMER' for any delays in delivery.

3.6 Force Majeure: 'NORBAR' accepts no responsibility for loss, damage or non-delivery arising by reason of riot, civil commotion, war whether declared or not, accident, shortened hours of labour, strikes, lock-outs, storm, flood, fire or any other circumstances beyond the direct control of 'NORBAR'.

#### **4. Property in Goods**

4.1 Property in Goods will not pass to the 'CUSTOMER' until payment in full has been made by the Customer to 'NORBAR' for all Goods delivered to the 'CUSTOMER' by 'NORBAR'.

#### **Until payment has been made in full and property passes in accordance with 5.1.**

4.2 Bailee and Storage: the 'CUSTOMER' shall hold all Goods as bailee and as fiduciary of 'NORBAR' and shall securely store same separately from the 'CUSTOMERS' other goods so as to clearly identify the Goods as 'NORBAR'.

4.3 Disposal of Goods: the 'CUSTOMER' is authorised to sell the Goods but shall hold the book debt and the proceeds of sale on trust for 'NORBAR' and shall account to 'NORBAR' for any overdue amount from the proceeds thereof, and the 'CUSTOMER', acknowledges that 'NORBAR' may collect the book debt arising from such

appropriate specification and which are expected to display the mechanical and chemical properties embodied in the material specification. The Company accepts no liability for its products which are proven to be defective by virtue of the steel or other materials which have been purchased failing to contain the mechanical and chemical properties embodied in the material specification.

#### **7. Acknowledgement of Terms and Conditions of Sale and Privacy Act Authorisation**

Each of the persons whose signatures appear on this Application (in whatever capacity)

#### **AUTHORISE AND ACKNOWLEDGE**

7.1 The 'CUSTOMER' to make this Application and have each read, understood and agree to be bound by all the Terms and Conditions of Sale.

7.2 That items of personal information contained in this Application and permitted to be kept on a credit information file to be disclosed to a credit reporting agency.

7.3 In accordance with paragraphs (b), (e) and (h) of s.18K(1) and/or s.18L(4) of the Privacy Act 1988, that disclosure by a credit reporting agency and/or used by 'NORBAR' of the relevant information referred to in those sections may occur for the purposes of assessing this application.

7.4 'NORBAR' may supply information about our credit worthiness to other credit providers and authorises the Trade References to provide 'NORBAR' with information about our credit worthiness



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sale as 'NORBAR' remains the beneficial owner of the book debt at all times.

## **TERMS OF GUARANTEE & INDEMNITY**

### **1. GUARANTEE**

The 'GUARANTOR' unconditionally and irrevocably guarantees payment to 'NORBAR' of the 'GUARANTEED LIABILITY'.

### **2. DEMAND**

2.1 If the 'CUSTOMER' does not pay the 'GUARANTEED LIABILITY' to 'NORBAR' on time and in accordance with the conditions of sale herein then the 'GUARANTOR' agrees to pay the 'GUARANTEED LIABILITY' on demand whether or not demand has been made on the 'CUSTOMER'. A demand may be made at any time and from time to time.

2.2 If the amount demanded remains unpaid for seven (7) days, the amount due shall be a charge against the property of the 'GUARANTOR' and the 'GUARANTOR' will, at the request of

NORBAR', execute a mortgage in registrable form pursuant to the provisions of the Real Property Act (S.A) or the equivalent legislation in the state in which the property to be secured is situated in favour of "NORBAR" for the amount due

2.3 The 'GUARANTOR' will pay all fees and costs incurred by "NORBAR" pursuant to this clause and all fees and charges will be secured by the mortgage referred to in clause 2.2 herein.

### **3. INDEMNITY**

As a separate undertaking, the 'GUARANTOR' indemnifies "NORBAR" against all liability or loss arising from and any costs, charges or expenses incurred in connection with the "GUARANTEED LIABILITY" not being recoverable from the 'GUARANTOR' or from the 'CUSTOMER' due to any circumstances whatsoever.