Noralux -
Terms of Trade (“Terms”)

1 Application of Terms

1.1 These Terms govern our supply of Goods and Services to you, including supplies on a cash basis.

1.2 If you wish to negotiate these Terms with us then you should respond to this document, marking up these Terms and drawing those changes to our attention and obtain our agreement in writing.

1.3 It is not our practice to otherwise review terms and conditions on documents that you issue to us.

1.4 Unless we otherwise agree in writing, we do not accept, and will not be bound by, any terms or conditions included in, attached to, or referenced in, any other document you give to us like a purchase order.

2 Quotations

2.1 Each quotation that we issue:

(a) is an estimate only;

(b) includes deposit terms;

(c) is not an offer or obligation to supply any Goods or to perform any Services;

(d) is exclusive of GST;

(e) does not include the costs of delivering Goods;

(f) remains valid for acceptance for a period of thirty (30) days from the date of quotation, unless withdrawn or varied by us at any time before a contract for supply is formed; and

(g) contains a price on the basis that all Services are performed, and all Goods delivered, during our usual business hours,

unless the quotation states otherwise.

2.2 Quotations provided orally are subject to written confirmation.

2.3 A quotation may include additional terms or conditions, which will supplement these Terms.

2.4 Should you wish to have Services performed or Goods delivered outside our usual business hours please let us know as additional charges may apply.

3 Orders

3.1 Orders that you place with us should:

(a) be in writing and sent to us via our nominated email address; and

(b) clearly set out and particularise the:

(i) Goods and Services the subject of the Order; and

(ii) all relevant delivery or installation addresses; and

(c) where Goods and Services are intended for new building projects or works, be placed by the slab stage of development.

4 Formation of contract

4.1 We are not obliged to supply any Goods or provide Services until after a contract for supply is formed.

4.2 A contract for supply is formed, and you have accepted these Terms, when:

(a) you have placed an Order with us; and

(b) we have received any deposit we have required from you in respect of the Order before progressing it; and

either we have:

(c) accepted your Order in writing; or

(d) supplied you with any Goods or performed any Services following receipt of your Order.

4.3 If you revoke an Order:

(a) prior to the formation of a contract for supply then:

(i) we will refund you any deposit you have paid in respect of that Order; and

(ii) you will not be required to pay any fee for the cancellation of the Order; or alternatively

(b) after the formation of a contract for supply then unless we are in breach of the contract for supply:

(i) you must pay all our reasonable costs associated with fulfilment of your Order; and

(ii) we may apply any deposit you have paid towards those costs.

5 Price

5.1 The price payable for the Goods or Services will be:

(a) the price agreed in writing; or alternatively

(b) the price by our prevailing price list or rates as when you place your Order.

6 Price variations

6.1 This clause 6 applies where a contract has formed and we have accepted your Order pursuant to clause 4.2(c).

6.2 Where you request or direct that any Goods or Services be supplied that are not strictly in accordance with your Order, then such Goods or Services shall constitute a price variation, unless otherwise agreed between the parties and clause 6.3 will apply.

6.3 You acknowledge and agree that:

(a) all price variations under clause 6.2 must be agreed between the parties in writing prior to the Goods or Services being supplied; and

(b) all price variations shall be, at our discretion acting reasonably, invoiced at the rate(s) specified in the quotation, as specifically quoted, or in accordance with our current prevailing rates (as amended from time to time).

6.4 Subject to clause 6.5, we reserve the right to vary the price or rates specified in the Order if:

(a) there is any movement in the cost of supplying the Goods or Services specified in the Order (including, without limitation, any actual increase in the costs to manufacturing, procuring, or transporting the Goods, foreign exchange fluctuation, currency regulation of duties, or significant increases in the cost of labour, materials);

(b) additional Goods or Services are required due to the discovery of hidden or unforeseen problems (including, without limitation, issues, faults or problems identified upon further inspection) which have been discovered following the commencement of the Services;

(c) the Goods or Services specified in the Order are varied from the Goods or Services specified in the quotation;

(d) you request:

(i) the Goods or Services be rendered outside our usual business hours;

(ii) different Goods or Services to be supplied to the Order; or

(iii) that we delay provision of the Goods or Services for sixty (60) days or more; or

(e) otherwise as provided for in these terms and conditions.

6.5 Where we vary the price or rates payable for the Goods or Services pursuant to clause 6.4, we will notify you of the new price or rates. Thereafter you may reject the new price or rates within seven (7) days and terminate the contract for supply without further cost, or any penalty to you, otherwise you agree that the new price or rates will apply to the contract. For clarity, any termination of the contract for supply under this clause will be without prejudice to any Goods or Services supplied prior to termination.

7 Delivery and risk

7.1 Unless otherwise agreed, you are responsible and liable for all reasonable charges and costs associated with delivery, shipping, freight, cartage, or other transport costs.

7.2 We will use reasonable endeavours to deliver the Goods at the time and place agreed for delivery. You will make arrangements necessary to take delivery of the Goods.

7.3 You acknowledge and agree that:

(a) unless the contract for supply expressly states otherwise, time in respect of delivery is not of the essence; and

(b) any timeframe or date for delivery is an estimate only and is not a contractual commitment.

7.4 If you do not require us to install Goods or perform other Services in connection with the Goods, you acknowledge and agree to provide us:

(a) (for regional-based customers): five (5) days' written notice; or

(b) (for metro-based customers): three (3) days' written notice,

confirming the anticipated date for delivery of the Goods.

7.5 If you require us to install hot water or split-system air condition Goods, you acknowledge and agree to provide us:

(a) (for regional-based customers): seven (7) days' written notice; or

(b) (for metro-based customers): five (5) days' written notice,

confirming the anticipated date for delivery of the Goods.

7.6 If you require us to install duct-system and other air condition Goods, you acknowledge and agree to provide us:

(a) (for regional-based customers): fifteen (15) days' written notice; or

(b) (for metro-based customers): ten (10) days' written notice,

confirming the anticipated date for delivery of the Goods.

7.7 If you require us to install solar electricity Goods, you acknowledge and agree to:

(a) provide us twenty (20) days' written notice confirming the anticipated date for delivery of the Goods;

(b) (if applicable) ensure the door to the garage is erected on the land or property before the relevant Goods are to be installed; or alternatively

(c) if the Goods are to be installed in stages, prior to "stage 2" (or such other time when an inverter is to be installed in connection with the Goods) you must:

(i) ensure that inverters intended for the Goods are installed in the garage erected on the land or property; and

(ii) schedule "stage 2" installation of the Goods to be completed not less than thirty (30) days before handover (when title to the land or property is transferred to the relevant owner).

7.8 Risk of loss, damage, or deterioration to the Goods passes to you, and delivery is deemed to occur, at the time:

(a) you or any third party on your behalf collect the Goods from us;

(b) we or our nominated carrier deliver the Goods to the delivery location stated in your Order (or to such other location as agreed in writing); or

(c) your nominated carrier takes possession of the Goods.

7.9 It is your responsibility to provide suitable, practical, and safe means of access and egress to the place agreed for delivery. If the site is deemed unsuitable or unsafe (at the delivery driver's sole discretion), then the delivery driver may:

(a) refuse to deliver the Goods and return the Goods to the point of despatch (in which case an additional delivery fee will apply to any subsequent delivery attempt); or

(b) deliver the Goods to the location nearest to the agreed place for delivery where delivery can be safely effected.

7.10 You agree to sign our delivery docket or consignment note or that of our nominated carrier as confirmation that you have received the Goods, and if appropriate, certify that you have received the Goods in apparent good order and condition in the quantity or volume you have ordered.

7.11 If you authorise us to deliver the Goods to an unattended location or to leave them outside the agreed place for delivery, we may deliver the Goods as requested at your risk.

7.12 If delivery or collection of the Goods is deferred:

(a) at your request; or

(b) due to you being unable or unwilling to accept delivery of the Goods (other than as a result of the Goods delivered not being in accordance with the contract for supply);

in circumstances where:

(c) we are ready to deliver the Goods and a delivery date has not been agreed; or

(d) the Goods are due to be delivered or collected on an agreed delivery date,

then you will pay to us:

(e) reasonable daily storage charges (which will continue to accrue until such time as the Goods are delivered or collected); and

(f) any costs associated with us or our nominated carrier attempting to re-deliver the Goods (where we or our nominated carrier has previously attempted to deliver the Goods).

7.13 You acknowledge and agree that we may deliver the Goods in one or more lots and may invoice you for pro rata progress in respect thereof.

8 Provision of Services

8.1 You must ensure that Site amenities required by our Personnel, including water, electricity (i.e. 240 volt), and sanitary accommodation (i.e. serviced toilet facilities) are made available for our Personnel's use (at no cost to us or our Personnel). If you fail to make such amenities available, we will be entitled to invoice you any additional costs we incur in procuring or providing such amenities.

8.2 You must, prior to us commencing the Services:

(a) obtain, at your expense, all relevant Approvals;

(b) restrict any animals and non-Personnel from accessing the Site;

(c) cover all swimming pools, spas, ponds, and other bodies of water near the Site;

(d) unless the contract states we are responsible for organising and providing such things, organise and provide:

(i) all necessary cranage and scaffold; and

(ii) any required safety handrails, harness safety points, and/or other safety devices necessary for our Personnel to safely install the Goods;

(e) provide us with such information and documentation that we reasonably require to perform the Services; and

(f) inform us of any special requirements pertaining to the installation (such as Site-specific policies or safety requirements).

8.3 Unless the contract states otherwise, you must provide us with a skip bin or suitable facilities for us to dispose of our rubbish. While we will be responsible for disposal of our rubbish, we will not be responsible for disposing of the rubbish of any third party.

8.4 You acknowledge and agree that:

(a) unless the contract expressly states otherwise:

(i) time in respect of completion of the Services is not of the essence; and

(ii) while we will take reasonable endeavours to complete the Services by the estimated date for completion, any timeframe or date for completion is an estimate only and is not a contractual commitment; and

(b) all Services carried out outdoors are contingent on suitable weather conditions; and

(c) we may suspend or cease performance of the Services at any time by notice to you if, in our opinion (acting reasonably), we determine the Site to be unsafe.

8.5 If the commencement or the completion of the Services is delayed due to any event beyond our reasonable control, such as:

(a) Goods unavailability;

(b) your failure to:

(i) select the Goods;

(ii) have the Site ready for us to perform the Services (including removing impediment fixtures or fittings that may prevent us from installing the goods); or

(iii) notify us the Site is ready for us to commence the Services.

then you agree we may extend the time for commencement or completion of the Services (as the case may be) by a period of time equal to the delay.

8.6 You must at all reasonable times permit our Personnel to have free, clear, and unrestricted access to the Site to enable us to fulfil our obligations without unreasonable interruption, impediment, delay, or obstruction.

8.7 If you make available access to the Site, you warrant that the Site is safe and that it complies with all relevant work health and safety laws and standards.

9 STCs

9.1 Unless otherwise agreed, in consideration for the price payable in clause 9.2 you must assign and transfer to us all rights and interests in STCs arising out of or in connection with any contract of which these Terms form part. To the extent necessary to give effect to this clause 9, you assign to us all right, title, and interest in STC (collectively, the **'STC Rights'**).

9.2 The price payable for an assignment of STC Rights will be:

(a) the price agreed in writing; or alternatively

(b) the price by:

(i) our prevailing price list or rates; or

(ii) reference to bona fide market value of the STC Rights,

as determined on the relevant date of installation of the Goods or performance of Services.

9.3 Subject to any contrary determination by CER, an assignment of STC Rights under these Terms will be effective where you have:

(a) completed, signed, and returned to us our Master STC Assignment Form (or such other form as may be reasonably prepared or required by us to effect assignment of the STC Rights from you to us);

(b) been provided access to, and have completed the online portal requirements (as may be reasonably required by us); and

(c) provided us with proof to our satisfaction of installation including certificates or other documentation, as may be advised by us from time to time.

9.4 Where an application pertaining to an assignment of STC Rights or where an actual assignment is rejected by CER, the parties must work together to take such steps as are necessary to correct or otherwise procure the assignment.

9.5 Without prejudice to any other rights under these Terms, where an application pertaining to an assignment of STC Rights or where an actual assignment is rejected by CER, no amounts will be payable by us with respect to those STC Rights.

9.6 Notwithstanding any other terms to the contrary, a failure to provide us with any relevant documents or information required under clause 9.3(c) within forty-five (45) days of installation may result in a forfeiture of STC Rights.

10 Recipient Created Tax Invoices

10.1 This clause 10 applies where STC Rights have been assigned to us and you seek to charge or invoice us for the assignment of such rights pursuant to clause 9.2.

10.2 Capitalised expressions which are not defined in this Agreement but which have a defined meaning in the GST Act have the same meaning in this clause.

10.3 If a party (**Assignor**) makes a Taxable Supply under this Agreement, then the Recipient of the Taxable Supply, must pay the Assignor the GST payable on the Taxable Supply in addition to the consideration for the Supply.

10.4 Within thirty (30) days from the end of the month when an assignment of STC Rights is effected, the Assignor must (where applicable) provide to the Recipient a Tax Invoice or other documentation that complies with the requirements for a valid Tax Invoice under the GST Act.

10.5 If the Recipient requires, the Recipient may issue to the Assignor a Recipient Created Tax Invoice (**RCTI**) in relation to an assignment or Taxable Supply in lieu of the Assignor issuing a Tax Invoice. Where that is the case, the Assignor must not issue a Tax Invoice for that assignment or Taxable Supply.

10.6 Subject to the Assignor issuing a Tax Invoice to the Recipient as required under clause 10.4, or the Recipient issuing a RCTI to the Assignor under clause 10.5, the Recipient must pay applicable GST on the assignment or Taxable Supply under these Terms to the Assignor at the same time as the Recipient pays the consideration for the Supply or assignment to the Assignor.

11 Payment terms

11.1 Unless you have a Credit Facility with us which is not in default:

(a) deposits we have requested must be paid before we commence providing Goods and Services;

(b) you must pay for all Goods before they are despatched (in cash or cleared funds); and

(c) you must pay for all Services on a progressive hourly basis as performed.

11.2 Payment may be made by cash, cheque, electronic funds transfer, Visa, Amex, or Mastercard credit cards. We reserve the right to change the payment methods that we accept at any time.

11.3 We may charge a payment surcharge for applicable payment transactions equal to our reasonable cost of acceptance.

11.4 You agree to pay GST on all taxable supplies upon us issuing you a tax invoice relating to the taxable supply.

11.5 You agree to pay sums due to us free of any set off or counterclaim and without deduction or withholding.

12 Claims

12.1 You must, within seven business (7) days of the date of delivery:

(a) inspect the Goods for shortfall, incorrect supply, and for any obvious or apparent defects that a reasonable person upon inspection would identify;

(b) give us notice in writing, with particulars, of any Claim that the Goods delivered are not in accordance with the contract for supply (including any Claim for shortfall, incorrect supply, defects, or obvious or apparent damage to the Goods); and

(c) at our request:

(i) provide us with photographic evidence (to our satisfaction) of any alleged damage to the Goods; and

(ii) permit us access to your premises (or any premises that you own or occupy) to inspect the Goods; and

(d) preserve Goods the subject of your Claim in the state in which they were delivered pending our inspection or review of your Claim.

12.2 You must notify us in writing of any Claim for non-delivery within seven (7) days of the date of the invoice which relates to the Goods the subject of your Claim.

12.3 If the contract for supply is not a Consumer Contract nor a Small Business Contract and you fail to notify us in accordance with clauses 12.1 and 12.2, then, to the extent permitted by law, the Goods are deemed to have been delivered in good condition and in accordance with the contract for supply.

12.4 If the contract for supply is a Consumer Contract or Small Business Contract and you fail to notify us in accordance with clauses 12.1 and 12.2, then, to the extent permitted by law, you waive your right to reject the Goods. For the avoidance of doubt, 'reject goods' and 'rejection of goods' has the same meaning given to these terms as in sales of goods legislation.

13 Returns

13.1 We will accept the return of any Goods if:

(a) the Goods supplied do not conform with the contract for supply;

(b) the Goods are defective; or

(c) we are required by law to accept the return of the Goods.

13.2 At our discretion, we may accept the return of Goods if you change your mind if:

(a) you agree to:

(i) a handling and administration charge of 20% of the purchase price of the returned Goods or $200; and

(ii) reimburse us for all costs we incur in connection with the return of those Goods (except for Goods we have incorrectly supplied or we agree are defective);

(b) the Goods are in substantially the same condition to the condition in which they were delivered; and

(c) the Goods were not specifically produced or procured at your request.

13.3 You indemnify and release us from any damage that occurs to any Goods in return transit. You should ensure that any returned Goods are insured against such damage.

14 Retention of title

14.1 Until such time as you have made payment in full (in cash or cleared funds) for any Goods we have supplied:

(a) title in the Goods does not pass to you and we retain the legal and equitable title in the Goods;

(b) you will hold the Goods as fiduciary and bailee for us and agree to store the Goods in such a manner as to enable them to be readily identifiable as our property;

(c) you undertake to not mix the Goods with similar goods;

(d) unless and until we notify you to the contrary, you will be entitled to sell the Goods in the ordinary course of your business (provided any such sale is at arm's length and on market terms) and will sell the Goods as our agent and bailee; and

(e) you undertake to hold any proceeds derived from the sale of the Goods on trust for us absolutely.

14.2 While title in the Goods remains with us, you permit us to enter upon any premises you occupy (or any premises any receiver, receiver and manager, administrator, liquidator, or trustee in bankruptcy of yours occupies) as your invitee to inspect the Goods and, when you are in default of payment of any invoice, to repossess any Goods in your possession, custody, or control.

14.3 Where we exercise our right of entry pursuant to clause 14.2, you agree that us doing so will not give rise to any Claim for trespass or similar action against us or our officers, employees, and agents.

14.4 Where we have retaken Goods into our possession, we have the right to sell or deal with those Goods, and, if necessary, sell any Goods bearing your name or trade mark, and you hereby grant us an irrevocable licence to do all things necessary to sell those Goods.

14.5 For the removal of doubt, our interest under this clause 14 constitutes a purchase money security interest for the purposes of the PPS Act.

15 Security interest

15.1 You must reimburse us for any costs we incur in registering our interests on the Personal Property Securities Register (including registration fees).

15.2 Unless you have obtained our prior written and fully informed consent, you undertake not to:

(a) register a financing change statement in respect of a security interest in our favour; or

(b) create, or purport to create, any security interest in the Goods (or any proceeds derived from the sale of such Goods), nor register, nor permit to be registered, a financing statement or financing change statement in relation to the Goods in favour of any third party.

15.3 You:

(a) waive your right to receive a copy of any verification statement in accordance with section 157 of the PPS Act; and

(b) agree that, to the extent permitted by the PPS Act:

(i) sections 95, 96, 117, 118, 120, 121(4), 123, 125, 126, 128, 129, 130, 132, 134, 135, 142, and 143 of the PPS Act do not apply and are hereby contracted out of; and

(ii) you waive your right to receive notices under sections 95, 118, 121(4), 127, 130, 132(3)(d), and 132(4) of the PPS Act.

15.4 We need not disclose information of the kind detailed in section 275(1) of the PPS Act, unless required by law.

15.5 Where we have rights in addition to those under Part 4 of the PPS Act, those rights continue to apply.

16 Particular Purpose

If you require any Goods for a particular purpose, you must advise us of that purpose prior to placing your Order and must obtain a written assurance from us that the Goods will meet your requirements. If you do not advise us of your requirements and we do not expressly warrant in writing that the Goods will be fit for your particular purpose, then you agree that you did not rely upon our skill or judgment in relation to the suitability of the Goods for that purpose.

17 Customer Material

17.1 You warrant and represent to us that all Customer Material:

(a) is accurate and correct; and

(b) will not infringe the Intellectual Property Rights of any third-party.

17.2 You grant us a non-exclusive, non-transferrable, royalty free, perpetual, worldwide licence to use all Customer Material for:

(a) the purposes of supplying the Goods or performing the Services; and

(b) marketing and advertising.

18 Intellectual Property Rights

18.1 All right, title, and interest in the Intellectual Property Rights in and to all Working Documents, and all Goods sold or supplied by us are, and will at all times, remain our property.

18.2 All improvements, derivatives and modifications to the Intellectual Property Rights contemplated by clause 18.1 (the **Improvements**) vest in us immediately on creation. To the extent necessary to give effect to this clause 18, you assign to us all right, title, and interest in the Improvements.

18.3 You acknowledge and agree that:

(a) you have no rights to use our Intellectual Property Rights under these Terms, except as expressly set out herein, unless otherwise agreed in writing; and

(b) you must not modify, copy, clone, or reverse engineer any of our Goods (nor procure or permit any person within your reasonable control to do any of these things).

19 Confidentiality

19.1 You agree to keep confidential, and not use or disclose, other than for your internal business purposes, any Confidential Information provided to or obtained by you before or after your entry into a contract of which these Terms form part.

19.2 The obligations of confidence imposed on you by clause 19.1 do not apply to Confidential Information that is required to be disclosed by any applicable law or under compulsion of a court, government authority, or the rules of any securities exchange (as long as you disclose the minimum amount required to satisfy the law or rules, provide us with prior notice in writing, and take reasonable steps to maintain the confidence of such Confidential Information) or that is in the public domain otherwise than as a result of a breach of these Terms or other obligation of confidence.

19.3 Clauses 19.1 and 19.2 survive the termination or performance of a Contract.

20 Default

20.1 Clauses 20.2 to 20.4 apply if you fail to pay sums to us when they fall due.

20.2 We may charge you interest on the outstanding debt (including any judgment debt) at the rate of 15% per annum.

20.3 We may suspend or cease the supply of any further Goods or Services to you.

20.4 We may require pre-payment in full for any Goods or Services which have not yet been supplied.

21 Indemnity

21.1 If you default in the performance or observance of your obligations under any contract of which these Terms form part, then:

(a) we will take steps to mitigate our loss and act reasonably in relation to any default by you; and

(b) we will give you notice requesting payment for loss and damage occasioned in respect of those events and requesting that you remedy any breach within a reasonable time; and

(c) if that demand is not met then you indemnify us in respect of loss, damage, costs (including collection costs, bank dishonour fees, and legal costs on an indemnity basis) that we have suffered arising therefrom.

21.2 Your liability to indemnify us will be reduced proportionally to the extent that any fraud, negligence, or wilful misconduct by us or a breach of our obligations under contract has contributed to the Claim, loss, damage, or cost which is the subject of the indemnity.

21.3 Your liability to indemnify us is a continuing obligation separate and independent from your other obligations and survives the termination or performance of any contract of which these Terms form part.

22 Limitation of liability

22.1 No party is liable to the other party for any Consequential Loss, including under clause 21, however caused arising out of or in connection with any contract for supply of which these Terms form part.

22.2 While we will take reasonable endeavours to meet any estimated delivery date or estimated time for Goods and Services, you acknowledge and agree that we are not liable for any delay associated with meeting those estimated timeframes.

22.3 If the contract for supply is not a Consumer Contract or a Small Business Contract then, to the extent permitted by law, our liability is limited to:

(a) (in the case of a supply of Goods):

(i) us repairing or replacing the Goods; or

(ii) us paying you the cost of having the Goods repaired or replaced.

(b) (in the case of a supply of Services):

(i) us supplying the Services again; or

(ii) us paying you the cost of having equivalent Services supplied.

23 Termination

A party may, with immediate effect, terminate any contract for supply of which these Terms form part by notice in writing, if the other party:

(a) commits a material or persistent breach of these Terms and does not remedy that breach (if capable of remedy) within seven (7) days of the receipt of a notice (or such longer time as specified in the notice) identifying the breach and requiring its remedy; or

(b) has failed to pay sums due to the party within seven (7) days; or

(c) has indicated that it is, or may become, insolvent; or

(d) ceases to carry on business; or

(e) comprises an entity which is the subject of the appointment of receivers or managers; or

(f) comprises a natural person who:

(i) has committed an act of bankruptcy; or

(ii) has been made bankrupt;

(g) comprises a corporation which:

(i) enters into voluntary administration;

(ii) is subject to a deed of company arrangement; or

(iii) is subject to the appointment of liquidators or provisional liquidators.

24 Trustees

24.1 If you are the trustee of a trust (whether disclosed to us or not), you warrant to us that:

(a) you enter into the contract for supply in both your capacity as trustee and in your personal capacity;

(b) you have the right to be reasonably indemnified out of trust assets;

(c) you have the power under the trust deed to enter into the contract for supply; and

(d) you will not retire as trustee of the trust nor appoint any new or additional trustee without first notifying us in writing and having the new or additional trustee sign an agreement on terms substantially the same as those governing your Credit Facility (where applicable).

24.2 You must give us a true and complete copy of the trust deed upon request.

25 Variation

We may amend these Terms in the future by notifying you in writing. The amended Terms will thereafter apply to each Order you place unless you earlier give us written notice in advance of placing a further Order.

26 Assignment

A party may only assign its rights under the contract for supply with the written consent of the other party.

27 Subcontracting

27.1 You acknowledge that, given the nature of our business we may be reasonably required to subcontract:

(a) the supply of any part of the Goods to be supplied; and

(b) the Services we are to provide (or any part of those Services),

however, doing so will not relieve us of any of our obligations to you under any contract of which these Terms form part.

28 Conflicts and Inconsistencies

If there is any conflict or inconsistency between any of the documents which together govern the relationship between the parties, it is agreed the order of precedence will be (highest to lowest):

(a) any additional terms or conditions contained in our quotation applicable to the supply of Goods or Services;

(b) any terms governing your Credit Facility; and

(c) these Terms.

29 Severance

If any part or term of our agreement with you (including any Credit Facility) is illegal, invalid, or unenforceable, it will be read down so far as necessary to give it a valid and enforceable operation or, if that is not possible, it will be severed from the contract and the remaining provisions will not be affected, prejudiced, or impaired by such severance.

30 Governing law and jurisdiction

30.1 Our relationship is governed by and must be construed according to the law applying in the State of Victoria.

30.2 The parties irrevocably submit to the exclusive jurisdiction of the courts of the State of Victoria with respect to any proceedings that may be brought at any time relating to our relationship.

31 Definitions

In these Terms, unless the context otherwise requires, the following definitions apply.

31.1 **Approval** means any authorisation, assessment, accreditation, determination, registration, clearance, permit, licence, consent, certificate, or other approval obtained or required or applying in connection with any contract of which these Terms form part.

31.2 **Australian Consumer Law** means Schedule 2 to the *Competition and Consumer Act 2010* (Cth), as amended.

31.3 **CER** means the Clean Energy Regulator (Cth), as succeeded.

31.4 **Claim** includes a claim, notice, demand, action, proceeding, litigation, investigation, judgment, or award howsoever arising, whether present, unascertained, immediate, future, or contingent, whether based in contract, tort, pursuant to statute or otherwise and whether involving a third party or a party to a contract for supply.

31.5 **Confidential Information** includes:

(a) any information relating to our business and affairs;

(b) any information that is by its nature confidential;

(c) any information which is designated by us as confidential;

(d) any information that you know, or ought to know, is confidential; and

(e) all financial information, pricing information, and commercially valuable information of ours.

31.6 **Consequential Loss** includes any:

(a) consequential loss;

(b) loss of anticipated or actual profits or revenue;

(c) loss of production or use;

(d) financial or holding costs;

(e) loss or failure to realise any anticipated savings;

(f) loss or denial of business or commercial opportunity;

(g) loss of or damage to goodwill, business reputation, future reputation, or publicity;

(h) loss or corruption of data;

(i) downtime costs or wasted overheads; or

(j) special, punitive, or exemplary damages.

31.7 **Consumer Contract** has the meaning given to this term in section 23(3) of the Australian Consumer Law.

31.8 **Credit Facility** means an account we have opened for you on which we may, from time to time, extend you with additional time to pay for our Goods and Services and associated charges.

31.9 **Customer**, **you** means the person or other entity who has placed an Order with us for the supply of Goods or Services (or the person on whose behalf an Order is placed).

31.10 **Customer Material** means all information and documentation provided to us by you (or on your behalf) in the course of us supplying the Goods or Services.

31.11 **Goods** means all goods supplied by us, as described on our quotation, invoice, or any other form issued by us.

31.12 **GST Act** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth), as amended.

31.13 **GST Law** has the same meaning as in the GST Act.

31.14 **Intellectual Property Rights** means all industrial and intellectual property rights throughout the world, whether present or future, and whether protectable by statue, at common law or in equity, including rights in relation to copyright, trade secrets, know how, trade marks (whether registered or unregistered or whether in word or logo/device form), designs, patents and patentable inventions, including the right to apply for registration of any such rights.

31.15 **Order** means a written or oral order placed by you requesting that we provide Goods or Services.

31.16 **Personnel** means officers, employees, and agents engaged by each party (but does not include the other party) and, in the case of the Supplier, includes its subcontractors (and any employee of those subcontractors).

31.17 **PPS Act** means the *Personal Property Securities Act 2009* (Cth), as amended.

31.18 **Services** means all services performed by us, as described on our quotation, invoice, or any other form issued by us.

31.19 **Site** means the location where the Services are to be performed.

31.20 **Small Business Contract** has the meaning given to this term in section 23(4) of the Australian Consumer Law.

31.21 **STC** means small-scale technology certificates created and issued by CER under its administered Small-scale Renewable Energy Scheme, as amended or succeeded.

31.22 **Supplier**, **we**, **us** means Noralux.

31.23 **Working Documents** means all plans, designs, specifications, and schedules created by us in the course of or in relation to any contract in which Intellectual Property Rights may subsist and all drafts, variations, alterations, and adaptations of such plans, designs, specifications, and schedules (whether currently existing or created in the future).

32 Interpretation

In these Terms, unless the context otherwise requires:

32.1 A time is a reference to the time zone of Melbourne, Australia unless otherwise specified.

32.2 $, dollar, or AUD is a reference to the lawful currency of Australia.

32.3 A party includes a reference to that person's executors, administrators, successors, substitutes (including a person who becomes a party by novation), assigns, and in the case of a trustee, includes any substituted or additional trustee.

32.4 A right includes a benefit, remedy, authority, discretion, or power.

32.5 The singular includes the plural and vice versa, and a gender includes other genders.

32.6 "In writing" or "written" means any expression of information in words, numbers, or other symbols, which can be read, reproduced, and later communicated, and includes electronically transmitted and stored information.

32.7 If a word or phrase is given a defined meaning, its other grammatical forms have a corresponding meaning.

32.8 Words such as "includes", "including", and "for example" are not words of limitation and are to be construed as though followed by the words "without limitation".

32.9 A term of an agreement in favour of two or more persons is for the benefit of them jointly and each of them separately.