

# Noralis, Inc.

## GENERAL TERMS AND CONDITIONS OF SALE

Acceptance of any order by Noralis, Inc. ("**Seller**") is expressly made conditional on Buyer's assent to the terms and conditions set forth herein. In the event that any of the terms or conditions of any purchase order, order confirmation or other communication of Buyer or Seller conflict with any of the terms and conditions set forth herein, these terms and conditions shall govern, and Seller hereby gives notice of its objection to any additional or different terms or conditions in any purchase order, order confirmation or communication from Buyer.

### 1. ACCEPTANCE OF ORDERS

All orders are subject to acceptance by Seller at its corporate offices in Austin, Texas, and Seller reserves the right to accept or reject any order. Possession of a price list or similar informational materials does not constitute an offer by Seller to sell to Buyer. Seller reserves the right to discontinue the provision of any listed services or the manufacture or sale of any products or goods at any time.

### 2. SHIPMENTS

2.1. Quoted shipping dates are based on estimates at the time of quotation. Seller will use its commercially reasonable efforts to meet such shipping dates, but Seller shall not be liable for any direct or indirect costs or damages, including without limitation incidental or consequential damages, resulting from late deliveries. Shipping terms will be FCA Seller's warehouse (Incoterms 2010).

2.2. For orders with indefinite delivery dates, Seller shall have the right to manufacture or procure the goods covered thereby and hold such goods for Buyer's account pending receipt of definite shipping instructions. Except as expressly provided otherwise herein, Buyer agrees to purchase, and will be charged for, all products ordered.

### 3. PRICE

All prices are subject to change without notice. The price charged will be the price in effect at the time of shipment. Should any governmental action or request prevent Seller from implementing any price or continuing any price already in effect, Seller may cancel Buyer's order or any part thereof.

### 4. CREDIT

Approval of Buyer's credit is required prior to any shipment. If Buyer's credit is unsatisfactory to Seller at any time for any reason or no reason at all, Seller reserves the right to suspend further deliveries, to require payment in advance, and/or to take such other actions as Seller determines in its sole discretion are advisable.

### 5. TERMS OF PAYMENT

5.1. Payment terms are net 30 days from date of invoice or as otherwise stated on individual invoices to Buyer. Invoices are payable in U.S. dollars only, unless otherwise expressly noted on the invoice. Buyer shall pay Seller for the products and services by paying all invoiced amounts within thirty (30) days from the invoice date.

5.2. If any amount is not paid when due, Seller shall have the right, in addition to any other remedy available to it, to charge interest on such overdue amount at an annual interest rate of 18% or the maximum rate allowed by law, whichever is less. Interest shall be paid on any overdue amount and shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgement, at the maximum rate permitted by law. In addition, if it becomes necessary to place Buyer's account with an attorney or other agency for collection, Buyer shall be responsible for all costs and expenses, including reasonable attorneys' and/or collection fees, incurred by Seller in connection therewith.

5.3. All payments, whether under the standard payment terms or otherwise, shall be considered received by Seller as follows:

5.3.1. Payments by Wire Transfer or other Electronic Funds Transfer: The business day immediately preceding the day on which funds are immediately available to Seller.

5.3.2. Payments by Check: The business day on which all funds are confirmed by Seller's bank as being immediately available to Seller.

5.3.3. Payments by Credit Card: The business day immediately preceding the day on which funds are immediately available to the Seller. All payments made by credit card shall include a surcharge of 3.5% of amounts paid.

If Buyer (i) becomes insolvent or otherwise unable to pay its debts as they become due, files or has filed against it a petition in bankruptcy, makes any assignment for the benefit of creditors, or has a receiver or trustee appointed for it or its property, (ii) takes action to liquidate or otherwise cease doing business as a going concern, (iii) undergoes a change in ownership, (iv) sells or otherwise transfers a substantial portion of its assets, (v) fails to provide adequate assurance or security for credit extended, or (vi) takes any other action that Seller determines in its sole discretion adversely impacts the conditions under which credit was extended, then all amounts outstanding from Buyer

hereunder shall at Seller's option become immediately due and payable and Seller shall have no further obligations to fulfill or ship any goods or provide any further services that have not already been paid for in full by Buyer.

## **6. TAXES, DUTIES, IMPORT/EXPORT AND OTHER FEES**

All prices and fees charged by Seller hereunder are exclusive of taxes, duties, import/export fees, registration fees, customs, and any other fees. Buyer shall pay all taxes whether currently or hereafter applicable, assessed upon or arising out of the transactions and relationships by these terms, including, without limitation, excise, withholding, sales, ad valorem, occupation, property, use, or VAT taxes imposed upon Buyer. Additionally, Buyer shall pay all duties, import/export and other fees applicable, assessed upon or arising from the transactions and relationships contemplated by these terms.

## **7. FREIGHT**

Unless specified in writing to the contrary by Seller, freight will be paid by Buyer. Seller reserves the right to ship orders at the most economical rate. If Buyer requests special packaging, handling and/or transportation, any additional cost(s) incurred shall also be charged to Buyer on the invoice. In the event of any general freight increase or any governmental ruling or regulation that results in increased freight costs, Seller may increase its price without any advance notice to reflect such additional costs. The increased price shall apply to all goods shipped on or after the effective date of such increase, ruling or regulation.

## **8. RISK OF LOSS; DELIVERY**

8.1. All shipments of goods hereunder shall be FCA Seller's manufacturing facility (Incoterms 2010). Title to, and the risk of any damage to or loss or shortage of, such goods shall pass to Buyer upon delivery of such goods by Seller to the carrier. Any claims for loss or damage should be filed by Buyer with the carrier in writing immediately upon receipt of the goods and should be supported by an inspection report or signed delivery receipt noting such loss or damage. In no event shall Seller be liable for damage or loss to a shipment caused by any carrier. Notwithstanding the foregoing, as further described in [Section 11](#) herein, Seller grants only a license, and does not pass title, for any software provided by Seller under any agreement, and title to any loaned or rented equipment remains with Seller.

8.2. If any products to be delivered to Buyer cannot be shipped to or received by Buyer when ready due to any cause attributable to Buyer or its other contractors, Seller may ship the products to a storage facility, including storage at the place of manufacture or repair, or to an agreed freight forwarder. In such case, the following will apply: (1) title and risk of loss immediately pass to Buyer upon delivery of such goods by Seller to carrier; (2) any amounts payable to Seller upon delivery or shipment shall be due, (3) all expenses and charges incurred by Seller related to the storage shall be payable by Buyer upon submission of Seller's invoices; and (4) when conditions permit and upon payment Buyer shall retrieve the products at its sole cost and expense.

8.3. If repair services are to be performed on Buyer's equipment at Seller's facility, Buyer shall be responsible for, and shall retain risk of loss of, such equipment at all times, except that Seller shall be responsible for damage to the equipment while at Seller's facility to the extent such damage is caused by Seller's negligence.

## **9. RESTRICTIONS**

Buyer acknowledges that Seller has invested significant time, energy and capital in order to develop its goods and that the goods contain Seller's proprietary information, design, material and know how. Buyer agrees that it will protect Seller's proprietary rights all such goods and will not, nor will it allow a third party to decompile, disassemble, reverse engineer, modify or create derivative works of any goods.

## **10. LICENSES**

10.1. From Seller to Buyer. Any software or firmware, either stand-alone or contained within the goods, will be licensed to Buyer and not sold. Title to and ownership of the software, firmware, documentation, works and any improved, updated, modified or additional parts thereof, and all copyright, patent, trade secret and other intellectual property rights embodied in the goods, firmware and/or software shall at all times remain the property of Seller or Seller's licensors. Seller grants Buyer the license and use rights to applicable software or firmware and related documentation as set forth in Seller's End User License Agreement (the "*EULA*"). All software must be acquired via electronic download from Seller's authorized website. Buyer must agree to all the terms and conditions set forth in the EULA prior to the initiation of the distribution of the applicable software to Buyer. The EULA is available for review on Seller's website.

10.2. From Buyer to Seller. By using the goods that contain software and firmware, in accordance with the EULA, Buyer grants to Seller a worldwide, non-transferable, non-exclusive, royalty-free license to use, collect, store, reproduce, aggregate, adapt, modify, publish and distribute any Buyer data that is generated, stored and/or transmitted to Seller by the goods and/or software or firmware when the goods and/or software or firmware contained within the goods are connected to the Internet or the goods are returned to Seller for servicing.

## 11. WARRANTY; EXCLUSION; LIABILITY DISCLAIMER AND REMEDY

### 11.1. Warranty.

11.1.1. Unless Buyer purchases an extended warranty as described in Section 11.1.2 below, Seller expressly warrants and agrees for a period of (a) SIX (6) months or (b) 10,000 hours of operation calculated by Seller using algorithms containing multipliers to compensate for degradation of the expected life of the tool related to elevated temperature and hostile environment ("Effective Operating Hours"), whichever is shorter, after Buyer accepts the products, all products covered by these terms will substantially conform to Seller's specifications, samples, drawings or other written materials and descriptions and will be free from defects in design, material and workmanship, normal wear and tear and abnormal abuse, neglect or breakage is excepted.

11.1.2. Buyer may purchase an extended warranty from Seller. Extended warranty must be purchased at time of original product purchase. If Buyer purchases extended warranty from Seller, Seller warrants and agrees for a period of (a) ONE (1) year or (b) 20,000 Effective Operating Hours, whichever is shorter, after Buyer accepts the products, all products covered by these terms will conform to Seller's specifications, samples, drawings or other written materials and descriptions and will be free from defects in design, material and workmanship, normal wear and tear and abnormal abuse, neglect or breakage is excepted.

**THE WRITTEN WARRANTIES REFERENCED ABOVE AND HEREBY INCORPORATED HEREIN ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, ORAL OR WRITTEN, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. IN NO EVENT SHALL SELLER BE RESPONSIBLE FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT OR SPECIAL DAMAGES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, LABOR COSTS, DAMAGE TO OTHER EQUIPMENT OR PROPERTY OR LIABILITY OR INJURY TO A THIRD PARTY ARISING FROM THE SALE, DELIVERY, USE OR INSTALLATION OF THE GOODS, WHETHER BASED IN CONTRACT, TORT OR OTHERWISE.**

11.2. Seller's warranty obligations hereunder shall be null and void should it be determined by Seller that Buyer or a third party has made any modifications, alterations or repairs to the goods or that Buyer has reversed engineered or decompiled the goods or that the required scheduled maintenance on the goods has not been performed as specified in the owner's manual provided by Seller. Additionally, Seller's warranty obligation hereunder shall be null and void should it be determined by Seller that the goods have been serviced (maintenance or repair) negligently or by a third party, or that Buyer or a third party has operated the goods outside Seller's maximum operational running specifications.

11.3. Seller's entire liability and Buyer's exclusive remedy under any express warranty is, at Seller's option, either (1) return of the payment that was made by Buyer for such item, or (2) replacement or repair of the products which do not meet the warranty conditions. Any repair or replacement of products shall be warranted for the remainder of the original warranty period or 60 days, whichever is longer.

## 12. CUSTOM ORDERS; CHANGE ORDERS

12.1. Buyer may contract with Seller to customize Seller's products to Buyer's specification. Except as may otherwise be expressly provided within a separate agreement between Seller and Buyer, Seller retains all rights to any customized solutions and may sell any custom products to other potential Buyers.

12.2. Buyer agrees to indemnify and hold Seller harmless against any claim, demand, action, proceeding, liability, loss, cost or expense, including reasonable attorneys' fees and costs, arising out of or relating to customized products designed and built to Buyer's specifications and/or designs.

12.3. Subject to Section 12.4 below, for any change orders not included in original quoted price, Buyer shall be responsible for extra charges for such permitted changes. Buyer will have responsibility to approve design made by Seller. Seller will correct any errors in Buyer design mutually agreed upon but will assume no liability for corrections to the designed product. Seller will not be responsible for product performance where the product is manufactured to Buyer's own design, prints, or specifications. Sizable and long delivery orders may be subject to monthly invoicing as work progresses. All custom orders are subject to Seller's terms and conditions.

12.4. Orders may be revised or canceled by Buyer prior to the following dates only, and only with Seller's prior consent:

12.4.1. Standard products: Prior to loading at the place of shipment.

12.4.2. Customized products: Prior to customization.

Standard products are as defined in applicable product data sheets and/or Seller's website in effect at the time such revision or cancellation is requested. Customized products will be considered on a case by case basis and identified on a custom quotation.

## 13. RETURN POLICY

Products may not be returned without the prior approval of an authorized Seller representative. Claims for defective material or workmanship must be made in writing within ten (10) calendar days of receipt of the product by Buyer. Buyer will not return the product unless Buyer has first obtained a return authorization ("**RMA**") from Seller. The Seller does not guarantee the functioning of third party devices which the Seller has not designed. Only standard products without Buyer and Seller agreed upon modifications will be considered for return. All returned products must arrive at the point of return designated by Seller and in re-sellable condition before credit will be issued.

#### 14. PAYMENT OF UNDISPUTED INVOICES

Buyer shall pay any undisputed invoices regardless of any dispute that may exist as to other delivered or undelivered goods. With respect to any disputed invoice, Buyer shall pay all amounts not in dispute. Buyer expressly waives the right to assert any offset or counterclaim with respect to amounts due under any invoice issued by Seller hereunder.

#### 15. FORCE MAJEURE

Seller shall not be liable for delays or failure to perform hereunder for any cause beyond Seller's reasonable control, including without limitation: fire, flood or other casualty or Act of God; strikes, lockouts or other labor trouble; shortage of labor, materials, fuel, or production facilities; equipment or other production failures; delay or interruptions in transportation; war, terrorist acts, blockades, sanctions or embargoes; and legal restrictions or actions of any governmental authority.

#### 16. CHANGE IN TERMS AND CONDITIONS OF SALE

These terms and conditions set forth the entire agreement between Seller and Buyer and supersede any and all prior representations, agreements or understandings, whether oral or written, relative to the goods delivered hereunder. No course of dealing or usage of trade shall be relevant to supplement or explain any of these terms or conditions. No modification or waiver of any of these terms and conditions shall be effective unless made in writing and signed by Seller. These terms and conditions supersede, and shall not be supplemented by, the terms of any purchase order, order confirmation or other communication of Buyer in connection with the purchase of goods from Seller. In the absence of Buyer's written acceptance of these terms and conditions, the acceptance by Buyer of any goods delivered hereunder shall constitute acceptance of these terms and conditions.

#### 17. COMPLIANCE WITH LAWS AND POLICIES

Buyer agrees that it shall comply with its obligations under these terms and conditions in accordance with the highest professional standards and in compliance all applicable laws, orders, rules and regulations of governmental authorities (collectively, "**Laws**"), including, without limitation, those Laws relating to health and/or safety of persons or property, the Foreign Corrupt Practices Act of 1977, as amended, of the United States of America, the U.S. Export Control Act of 1940, as amended, the U.S. Export Administration Act of 1979, as amended, and the USA Patriot Act of 2001 (Pub. L. No. 107-56) and any other Laws of the United States or any other relevant jurisdiction related to anti-money laundering. Buyer specifically agrees to comply with applicable United States Government regulations found in 15 CFR 730-744 (Export Administration regulations) and 22 CFR 120-130 (International Traffic in Arms Regulations) and shall not export, divert or re-export any technology, data, products, or other information of Seller, nor engage in any boycott activity contrary to these regulations.

Buyer acknowledges that this Agreement and Goods and Services identified herein are subject to U.S. export control and sanctions laws and regulations, including, without limitation, the Trading with the Enemy Act of 1917 (50 U.S.C. §§ 1-44); the International Emergency Economic Powers Act (50 U.S.C. §§ 1701-1706); the Foreign Narcotics Kingpin Designation Act (21 U.S.C. §§ 1901-1908, 8 U.S.C. § 1182); the Iran Sanctions Act of 1996 (50 U.S.C. § 1701 note), as amended by the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (PL 111-195); the Iran Threat Reduction and Syria Human Rights Act of 2012 (PL 112-158); the Countering America's Adversaries Through Sanctions Act (PL 115-44); the Arms Export Control Act (22 U.S.C. § 2278); the Export Administration Act (50 U.S.C. App. §§ 2401-2420); the Export Control Reform Act of 2018 (Sections 1471-1781 of P.L. 115-232); the International Traffic in Arms Regulations (22 C.F.R. Parts 120-130); the Export Administration Regulations (15 C.F.R. Part 730 et seq.), and the regulations, rules, and executive orders administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury ("OFAC") (collectively, the "Export Controls and Sanctions Laws"). Buyer agrees to comply with all Export Controls and Sanctions Laws applicable to Goods and Services and shall not take any action that will cause Seller to violate or be subject to penalty under the Export Controls and Sanctions Laws.

Buyer represents and warrants that neither Buyer, nor any of its agents, representatives, affiliates or customers, to the extent that such agents, representatives, affiliates or customers are acting in connection with, or may be direct or indirect beneficiaries to, the transactions contemplated by this Agreement:

(a) is a Prohibited Person;

(b) will directly or indirectly export, reexport, sell, lease, transfer (in-country), or otherwise assign the rights to Goods or Services to a Prohibited Person;

(c) will directly or indirectly export, reexport, supply or otherwise transfer Goods or Services to, or transship Goods or Services through, any Sanctioned Country;

(d) will export, reexport, transfer (in-country), sell, or supply any of the Goods or Services for use directly or indirectly in, or will itself use any of the Goods or Services directly or indirectly in, exploration for, or production of, oil or gas in Russian deepwater (i.e., depths greater than 150 meters) or Arctic offshore locations or shale formations in Russia;

(e) will use a vessel to transport Goods or Services that is a Prohibited Person or owned by a Prohibited Person;

(f) will make any payment to or receive any payment from, directly or indirectly, any Prohibited Person in connection with [Goods] or [Services] or the transportation thereof that may cause Seller to violate or be subject to penalties under any applicable Export Controls and Sanctions Laws; or

(g) will otherwise transact in any manner that would cause Seller to violate or be subject to penalties under applicable Export Controls and Sanctions Laws in connection with the purchase or sale of Goods or Services.

If, at any time during the term of this Agreement, any Export Controls and Sanctions Laws are imposed that restrict [Seller's] ability to perform any obligations hereunder, then Seller shall promptly give written notification thereof to Buyer, and Seller may reject any transaction or cancel or suspend in whole or in part the supply of Goods or Services under this Agreement, without any liability of Seller to Buyer, to the extent that Seller determines, in its sole discretion, that such transaction or supply of Goods or Services is prohibited by Export Controls and Sanctions Laws.

Notwithstanding any provision of this Agreement to the contrary, if Buyer or any other person that is a direct or indirect beneficiary to any transaction contemplated by this Agreement becomes a Prohibited Person at any time during the term of this Agreement, then Seller shall give written notice thereof to Buyer, and this Agreement will automatically terminate.

Buyer shall indemnify and hold Seller harmless from all any and all claims in the event that Buyer breaches any provision of this section.

For purposes of this section:

(a) "Prohibited Person" means (i) any individual or entity that has been determined by competent authority to be the subject of a prohibition in any law, regulation, rule, or executive order administered by OFAC or the U.S. Department of State; (ii) the government, including any political subdivision, agency, or instrumentality thereof, of any Sanctioned Country; (iii) any individual or entity that acts on behalf of or is owned or controlled by the government of a Sanctioned Country; (iv) any individual or entity that has been identified on the OFAC Specially Designated Nationals and Blocked Persons List (Appendix A to 31 C.F.R. Ch. V) or the OFAC List of Foreign Sanctions Evaders, as amended from time to time, or any entity that is directly or indirectly owned 50% more (individually or in the aggregate) or otherwise controlled by individuals or entities identified on either list; or (v) any individual or entity that has been designated on any similar list or order published by the United States government, including, without limitation, the Denied Persons List, Entity List, or Unverified List of the U.S. Department of Commerce, or the Debarred List or Nonproliferation Sanctions List of the U.S. Department of State.

(b) "Sanctioned Country" means any country or territory against which the United States maintains comprehensive economic sanctions or embargoes (as of the date of these terms, Cuba, Iran, North Korea, Syria, and Crimea).

## **18. DISPUTE RESOLUTION BY BINDING ARBITRATION**

18.1. Any controversy or claim arising out of or relating to these terms and conditions and/or the purchase, sale, or use of any product and/or service furnished by Seller shall be settled by binding arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules including the Optional Rules for Emergency Measures of Protection, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

18.2. The damage award in any arbitration may not exceed the total amount paid by Buyer to Seller for the goods and/or services at issue and shall not include an award of consequential or punitive damages.

18.3. Each party shall bear its own costs and expenses and an equal share of the arbitrators' and administrative fees of arbitration. Notwithstanding the foregoing, should Seller successfully compel arbitration under these terms and conditions, Buyer shall pay Seller's reasonable and necessary costs and attorneys' fees incurred in compelling arbitration.

18.4. The place of arbitration shall be Travis County, Texas, U.S.A. and the language of the arbitration shall be English.

18.5. The parties acknowledge that these terms and conditions evidence a transaction involving interstate commerce. The United States Arbitration Act shall govern the interpretation, enforcement, and proceedings pursuant to this arbitration clause and these terms and conditions.

18.6. Except as may be required by law or to enter a judgment on an arbitration award, neither a party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties.

18.7. Although the parties agree that compulsory and binding arbitration shall be the exclusive means of dispute resolution, judicial review of any arbitration decision or proceeding (other than entry or enforcement of an arbitration award/judgment) or of any matter arising under these terms and conditions, whether or not submitted to the binding arbitration process required by these terms and conditions, shall be brought solely in the federal or state courts of located in Travis County, Texas.

## **19. GENERAL CLAUSES**

19.1. No agreement by Seller to supply goods to Buyer may be assigned or transferred (by operation of law or otherwise) by Buyer without the prior written consent of Seller, and any purported assignment made without such consent shall be null and void. For this purpose, an assignment shall include the sale or other transfer of a controlling interest in the stock or other equity of Buyer and any merger of Buyer with or into another entity. These terms and conditions shall inure to the benefit of and be binding upon Seller and Buyer and their permitted successors and assigns.

19.2. All agreements by Seller to supply goods to Buyer shall be governed by and construed in accordance with the laws of the State of Texas, without giving effect to its conflicts of law provisions and without regard to the United Nations Convention on Contracts for the International Sale of goods.

**August 2020**