

CORMACK HOLDINGS PTY LIMITED - ACN 000 058 711
TERMS OF SALE – As at 1 July 2022

1. **Application:** These terms apply to every order of goods and/or services placed by the relevant customer (**Buyer**) with Cormack Holdings Pty Limited ACN 000 058 711 (**Cormack**) even if they are not attached to a quote or order. Each order is a separate agreement.
2. **Acceptance:** Acceptance of an order only occurs where Cormack accepts the order.
3. **Buyer's Obligations:** The Buyer must provide all information and documentation reasonably requested by Cormack and ensure same are accurate and complete in all material respects.
4. **Buyer's Warranties:** The Buyer warrants that all information and documentation provided by the Buyer does not infringe the intellectual property rights of any third parties and complies with all applicable laws. The Buyer is solely responsible for performing all testing and validations to ensure the goods are fit for their intended purpose and are of merchantable quality. To the fullest extent permitted by law, Cormack does not warrant that the goods will be fit for their intended purpose or of merchantable quality.
5. **Quotations and Orders:** A quotation is not an offer. The Buyer may use the quotation to submit an order to Cormack. Unless the quotation states otherwise, it is only valid for 7 days from its date. If the Buyer is given a quote and instructs Cormack to proceed, the Buyer is taken to have submitted an order to Cormack on the terms of the quote. Cormack is not obliged to accept any order.
6. **Forecasts:** In addition to any other obligations relating to cancellation, if the Buyer wishes to cancel a repeat order or an order based on forecasted requirements the Buyer must give Cormack six months' notice in writing (or such other period as is agreed in writing between the parties) to do so, and the Buyer indemnifies Cormack against all loss and damage sustained by Cormack arising, directly or indirectly, from that cancellation.
7. **Cormack's Obligations:** To the fullest extent permitted by law, Cormack is only required to provide the Buyer with the goods/services in accordance with these terms and any terms put forward by the Buyer are null and void and of no effect unless accepted by Cormack in writing.
8. **Descriptions and Samples:** Any samples or descriptions including as to specifications, illustrations, drawings, data, dimensions and weights are approximate only and are given by way of identification only. To the fullest extent permitted by law, the use of same does not constitute a sale by sample or description and does not form part of an order unless agreed by Cormack in writing.
9. **Price and Description:** The price and description of the goods/services are as set out in Cormack's price list or as otherwise set out in writing by Cormack. Cormack may change or withdraw any aspect of the price or description at any time and without prior notice.
10. **Payment and GST:** All payments are due 30 days from the date of invoice. Unless otherwise agreed, the Buyer must pay all delivery costs, storage fees and merchant fees on credit card payments in addition to the price. Interest on late payments will apply at the rate of 9% per annum calculated daily and is payable on demand. All payment times are of the essence. Unless otherwise specified, all amounts are expressed to be exclusive of goods and services tax (**GST**) and therefore GST must be added to the amount.
11. **Personal Property Securities Law:** Cormack and the Buyer agree that for the purposes of the *Personal Property Securities Act 2009* (Cth) each order and all invoices issued by Cormack constitute a 'security agreement' and that Cormack's interest in the goods the subject of the security agreement is a 'security interest' that secures the payment of all money and the performance of all obligations owing by the Buyer to Cormack in respect of the security agreement.
12. **Delivery:** The Buyer must take delivery of the goods either by itself or through its carrier/agent at Cormack's premises or, if Cormack has agreed to deliver same to another address, at that other address. Cormack will endeavour to meet any stated delivery date but Cormack is not liable for, nor is the Buyer entitled to cancel its order for, any non-delivery or late delivery. Delivery may be made in one or more lots, at different times and by separate deliveries. If Cormack allows the Buyer to nominate a delivery date, such date may not be more than 60 days after the expected date of manufacture of the goods as advised by Cormack. The quantity of goods delivered can vary by up to 10% of the quantity specified in the order. Cormack is entitled to invoice the Buyer for the goods and the Buyer is obliged to pay that invoice even if the Buyer has refused or failed to take or accept delivery.
13. **Inspection:** The Buyer should inspect the goods immediately upon delivery. To the fullest extent permitted by law, the Buyer must report to Cormack in writing any damage or incorrect supply of the goods within the lesser of 90 days of delivery, 7 days of the date the goods are tested and validated in accordance with these terms or as otherwise agreed in writing, otherwise the Buyer is deemed to have accepted the goods and Cormack may refuse any claim made by the Buyer.
14. **Title and Risk:** Risk passes to the Buyer at the time of delivery. Title passes to the Buyer on the earlier of use of the goods by the Buyer or receipt of full payment for same by Cormack. The Buyer must fully insure the goods for their replacement value between the time when risk passes and the time when title passes and note Cormack's interest on such policy if requested to do so.
15. **Limitation of Liability:** To the fullest extent permitted by law: (a) Cormack is not liable for any consequential, special, incidental or other indirect loss or damage of any kind; (b) all implied warranties, terms and conditions including those relating to fitness for purpose and merchantable quality are excluded; and (c) if after applying any exclusion and/or limitation (as the case may be) Cormack still has a liability, then Cormack's maximum liability (including in tort or negligence) is limited to: (i) at Cormack's option to repairing, replacing or resupplying the relevant goods or services or paying for the cost of same or refunding the price paid by the Buyer to Cormack for the relevant goods or services; or (ii) subject to sub-clause (i), where Cormack's liability to the Buyer is covered by an insurance policy held by Cormack, to the amount paid to Cormack by its insurer in respect of the matter giving rise to the claim.
16. **Mitigation:** The Buyer must use its best endeavours to mitigate any loss or damage it may suffer or incur.
17. **Indemnity:** The Buyer indemnifies Cormack against all claims, demands, proceedings, costs, losses, damages, liabilities and expenses of any kind suffered or incurred by Cormack (including legal costs on a full indemnity basis) relating to or arising from any breach of these terms or an order by the Buyer.
18. **Suspension:** Cormack may suspend its obligations if the Buyer breaches its obligations until such breach is rectified without being liable to the Buyer for any loss or damage the Buyer may sustain as a result.
19. **Pallets:** The Buyer acknowledges that any pallets used for delivery of goods are held by the Buyer as bailee only. The Buyer indemnifies Cormack for any loss or damage arising from any pallet not being returned to Cormack in good order and condition within 7 days of

20. **Intellectual Property Rights:** All intellectual property rights of every kind in respect of the goods/services vests and remains with Cormack and the Buyer receives no right, title or interest in same.
21. **Termination:** Cormack may terminate an order (including during or after any suspension) immediately if the Buyer: (a) has a receiver, receiver and manager, administrator, liquidator, provisional liquidator or external controller appointed; (b) becomes bankrupt, insolvent or wound-up; (c) has a resolution passed for winding-up, commits an act of insolvency or bankruptcy; (d) enters into any scheme or arrangement with its creditors; (e) breaches an essential term; (f) breaches a term that is not capable of remedy; or (g) breaches a non-essential term that is capable of remedy but which is not so remedied within 14 days of written demand. Termination does not affect any term expressed or capable of operating or having effect subsequent to termination and is without prejudice to any accrued right or remedy of Cormack.
22. **Cancellation by Cormack:** Cormack may cancel an order at any time before the goods/services are supplied by notice to the Buyer in which case Cormack shall repay any sums paid by the Buyer in advance to Cormack in respect of same, but otherwise Cormack is not liable to the Buyer in respect of such cancellation.
23. **Cancellation by Buyer:** Once an order has been accepted by Cormack, the Buyer cannot cancel or amend it without the written consent of Cormack.
24. **Confidentiality:** The Buyer must keep all of Cormack's Confidential Information secret, not use same except to the extent necessary for the purposes of these terms, and store same in a way that minimises the risk of unauthorised access. **Confidential Information** includes these terms and any technical, scientific, commercial, marketing, financial or any other information about Cormack's business and processes that is not in the public domain (other than due to breach of a confidentiality obligation).
25. **Force Majeure:** If due to anything beyond the reasonable control of Cormack, Cormack is unable to perform any of its obligations, Cormack is relieved of that obligation to the extent and for the period that it is so unable to perform and is not liable for any loss or damage of any kind suffered by the Buyer arising out of such inability to perform. In addition, Cormack is entitled to a reasonable extension of any timeframe applicable to its obligations as a result.
26. **Variation:** Cormack may vary these terms in which case those new terms shall apply to every new order after the Buyer has been notified of same. Subject to the foregoing, a variation has no force or effect unless Cormack agrees in writing.
27. **Miscellaneous:** Cormack may assign or subcontract its rights and obligations without the consent of the Buyer. The Buyer cannot assign or subcontract its rights and obligations. A waiver is only effective if given in writing. No rule of construction applies to the disadvantage of a party because they were responsible for the preparation of these terms. Any term that is unenforceable will be severed. The laws of New South Wales, Australia apply and all proceedings must be brought in that State. The words "**includes**" and "**including**" are not words of limitation. All references to money are to the lawful currency of Australia unless otherwise specified.
28. **Thermoplastics:** To obtain expected benefits and service from thermoplastics (including the goods) and minimise potential complications, and prior to the issuance of an order, the Buyer must: (a) be familiar with and allow for the working characteristics of thermoplastics; (b) determine and allow for the impact of environmental conditions and chemical substances on the appearance, durability, stiffness, and other attributes and uses of the goods, as well as the effects of compatibility factors and the effects of contact or use with hydrocarbons, oxidising materials and essential oils; (c) determine and implement proper handling and storage techniques; and (d) establish and implement suitable environmental and time parameters for exposure to light, weather, temperature, pressure, vacuum, and other ambient factors as they may vary during or as a result of transportation, storage, stacking, handling and filling. In addition, it is the Buyer's responsibility to evaluate compatibility with filled or finished product and intended use, evaluate compatibility with any other products with which the goods are intended to fit or be used, determine maximum load capability with filled product before stacking, and consider the effect of real world use and environmental factors.
29. **Advice:** At the Buyer's request, Cormack may provide such technical advice, assistance or information as it has available with respect to the goods including their use (**Advice**). In doing so, however, to the fullest extent permitted by law: (a) Cormack has no obligation to provide such Advice; (b) Cormack gives no warranty regarding the Advice provided including about its accuracy, completeness, currency or reliability; (c) the Buyer relies solely upon its own inquiries relating to such Advice in all respects and does so solely at its own risk; and (d) Cormack is not liable to the Buyer for any loss or damage of any kind suffered or incurred by the Buyer relating to the Advice.
30. **Inventory:** If Cormack has agreed to retain an inventory or safety stock of goods, Cormack's obligation to produce goods for that purpose are subject to the Buyer's compliance with these terms including as to payment, providing an accurate forecast (if requested by Cormack) and complying with the lead-times specified by Cormack. If any good is discontinued or changed by the Buyer, the Buyer must purchase and pay for such goods that have been manufactured and the raw materials for open orders for such goods. If any goods are maintained in inventory for more than 90 days, the Buyer must either purchase such goods or direct that the goods be scrapped and pay the purchase price as if such goods had been purchased.
31. **Tooling:** Any tooling charges are payable by the Buyer either as an upfront payment or by amortised payments as agreed in writing by the parties. All tooling remains the sole property of Cormack unless otherwise agreed in writing.
32. **Tolerances:** If the Buyer supplies specifications to Cormack, then provided the goods made do not vary by more than the tolerance specified by Cormack or, if Cormack has not specified a tolerance, established industry tolerance, the goods must be accepted by the Buyer as being compliant with the specifications and these terms.
33. **Exports:** The Buyer is responsible, at its expense and risk, for complying with all applicable laws and licencing requirements and obtaining all necessary permits, licences and other consents relating to the exporting of the goods. Cormack does not warrant that the goods are suitable for export or that they will comply with any relevant laws in any country or jurisdiction outside of Australia.
34. **Australian Consumer Law:** If the Australian Consumer Law (**ACL**) and/or Competition and Consumer Act 2010 (Cth) (**CCA**) applies to the goods or services that Cormack provides, then these terms must be read subject to any parts of the ACL or CCA that cannot be limited, modified or excluded.