

1. **Application:** These terms apply to every order of goods and/or services placed by the relevant customer (**Buyer**) and accepted by the relevant TricorBraun company (being TB AUS if the order is accepted by that entity or TB NZ if the order is accepted by that entity) (**TricorBraun**) 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 TricorBraun accepts the order.
3. **Buyer's Obligations:** The Buyer must provide all information and documentation reasonably requested by TricorBraun and ensure the 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. To the fullest extent permitted by law, 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, TricorBraun 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 TricorBraun. Unless the quotation states otherwise, it is only valid for 7 days from its date. If the Buyer is given a quote and instructs TricorBraun to proceed, the Buyer is taken to have submitted an order to TricorBraun on the terms of the quote. TricorBraun 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 TricorBraun six months' notice in writing (or such other period as is agreed in writing between the relevant parties) to do so, and to the fullest extent permitted by law the Buyer indemnifies TricorBraun against all loss and damage sustained by TricorBraun arising, directly or indirectly, from that cancellation.
7. **TricorBraun's Obligations:** To the fullest extent permitted by law, TricorBraun 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 TricorBraun 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 the same does not constitute a sale by sample or description and does not form part of an order unless agreed by TricorBraun in writing.
9. **Price and Description:** The price and description of the goods/services are as set out in TricorBraun's price list as at the time of acceptance of the order or as otherwise set out in writing by TricorBraun. To the fullest extent permitted by law, TricorBraun may change or withdraw any aspect of the price or description at any time prior to TricorBraun's acceptance of the relevant order.
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:** TricorBraun and the Buyer agree that for the purposes of the *Personal Property Securities Act 2009* (Cth) (in respect of orders accepted by TB AUS) or the *Personal Property Securities Act 1999* (NZ) (in respect of orders accepted by TB NZ) each order and all invoices issued by TricorBraun constitute a 'security agreement' and that TricorBraun'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 TricorBraun 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 TricorBraun's premises or, if TricorBraun has agreed to deliver the same to another address, at that other address. TricorBraun will use its reasonable endeavours to meet any stated delivery date but to the fullest extent permitted by law TricorBraun 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 TricorBraun 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 TricorBraun. The quantity of goods delivered can vary by up to 10% of the quantity specified in the order. To the fullest extent permitted by law, TricorBraun, acting reasonably, 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 TricorBraun 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 TricorBraun may, acting reasonably, 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 the same by TricorBraun. 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 TricorBraun's interest on such policy if requested to do so.
15. **Limitation of Liability:** To the fullest extent permitted by law but subject to clause 34: (a) TricorBraun is not liable for any consequential, special, incidental or other indirect loss or damage of any kind; (b) all implied warranties, representations, obligations, terms and conditions including those relating to fitness for purpose and merchantable or otherwise acceptable quality are excluded; and (c) if after applying any exclusion and/or limitation (as the case may be) TricorBraun still has a liability, then TricorBraun's maximum liability (including in tort or negligence) is limited to: (i) at TricorBraun's option to repairing, replacing or resupplying the relevant goods or services or paying for the cost of the same or refunding the price paid by the Buyer to TricorBraun for the relevant goods or services; or (ii) subject to sub-clause (i), where TricorBraun's liability to the Buyer is covered by an insurance policy held by TricorBraun, to the amount paid to TricorBraun 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:** To the fullest extent permitted by law, the Buyer indemnifies TricorBraun against all claims, demands, proceedings, costs, losses, damages, liabilities and expenses of any kind suffered or incurred by TricorBraun (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:** TricorBraun 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 TricorBraun for any loss or damage arising from any pallet not being returned to TricorBraun in good order and condition within 7 days of delivery of the relevant goods. If the Buyer requests, TricorBraun may, in its absolute discretion, arrange for the transfer or hire of pallets to the Buyer and further, may allow pallets to be exchanged on a one-for-one basis at a depot nominated by TricorBraun.
20. **Intellectual Property Rights:** All intellectual property rights of every kind in respect of the goods/services vests and remains with TricorBraun and the Buyer receives no right, title or interest in the same.
21. **Termination:** TricorBraun 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 TricorBraun.

22. **Cancellation by TricorBraun:** To the fullest extent permitted by law, TricorBraun may cancel an order at any time before the goods/services are supplied by written notice to the Buyer in which case TricorBraun shall repay any sums paid by the Buyer in advance to TricorBraun in respect of the same, but otherwise TricorBraun is not liable to the Buyer in respect of such cancellation.
23. **Cancellation by Buyer:** Once an order has been accepted by TricorBraun, the Buyer cannot cancel or amend it without the written consent of TricorBraun.
24. **Confidentiality:** The Buyer must keep all of TricorBraun's Confidential Information secret, not use the same except to the extent necessary for the purposes of these terms, and store the 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 TricorBraun'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 TricorBraun, TricorBraun is unable to perform any of its obligations, TricorBraun 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, TricorBraun is entitled to a reasonable extension of any timeframe applicable to its obligations as a result.
26. **Variation:** TricorBraun may vary these terms in which case those new terms shall apply to every new order after the Buyer has been notified of the same. Subject to the foregoing, a variation has no force or effect unless TricorBraun and the Buyer agree in writing.
27. **Miscellaneous:** To the fullest extent permitted by law, TricorBraun may assign or subcontract its rights and obligations without the consent of the Buyer. The Buyer cannot assign (except with the prior written consent of TricorBraun which cannot be unreasonably withheld or delayed) 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 unless the term is unenforceable because it is declared to be an unfair contract term, in which case it shall, at TricorBraun's election, be deemed to be amended to the minimum extent required to prevent it from being an unfair contract term. The laws of New South Wales, Australia apply and all proceedings must be brought in that State in respect of orders accepted by TB AUS. The laws of New Zealand apply and all proceedings must be brought in that country in respect of orders accepted by TB NZ. The words "includes" and "including" are not words of limitation. All references to money are to the lawful currency of Australia in respect of orders accepted by TB AUS unless otherwise specified. All references to money are to the lawful currency of New Zealand in respect of orders accepted by TB NZ unless otherwise specified. The rights and obligations of TB AUS and TB NZ are several and NOT joint and NOT joint and several. Unless the context otherwise requires, references to Australian legislation, laws, regulations, codes of practice, standards, governmental, statutory and regulatory authorities only apply to orders accepted by TB AUS. Unless the context otherwise requires, references to New Zealand legislation, laws, regulations, codes of practice, standards, governmental, statutory and regulatory authorities only apply to orders accepted by TB NZ. The term "TB AUS" means TricorBraun ANZ Pty Ltd ACN 000 058 711. The term "TB NZ" means TricorBraun NZ Limited (company number 401640).
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, TricorBraun 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) TricorBraun has no obligation to provide such Advice; (b) TricorBraun 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) TricorBraun 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 TricorBraun has agreed to retain an inventory or safety stock of goods, TricorBraun'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 TricorBraun) and complying with the lead-times specified by TricorBraun. 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 relevant parties. All tooling remains the sole property of TricorBraun unless otherwise agreed in writing.
32. **Tolerances:** If the Buyer supplies specifications to TricorBraun, then provided the goods made do not vary by more than the tolerance specified by TricorBraun or, if TricorBraun 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. To the fullest extent permitted by law, TricorBraun 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 in respect of orders accepted by TB AUS or New Zealand in respect of orders accepted by TB NZ.
34. **Consumer Law:** To the fullest extent permitted by law, if the Australian Consumer Law (**ACL**) and/or *Competition and Consumer Act 2010 (Cth)* (**CCA**) applies to the goods or services that TricorBraun provides in respect of orders accepted by TB AUS, then these terms must be read subject to any parts of the ACL or CCA that cannot be limited, modified or excluded. If the *Fair Trading Act 1986 (NZ)* (**FTA**) and/or the *Consumer Guarantees Act 1993 (NZ)* (**CGA**) applies to the goods or services that TricorBraun provides in respect of orders accepted by TB NZ, then these terms must be read subject to any parts of the FTA or CGA that cannot be limited, modified or excluded. However for the purposes of this clause and clause 15, the parties acknowledge and agree that to the extent that goods are acquired by the Buyer for the purposes of a business in terms of the CGA or the goods are supplied and acquired in trade for the purposes of the FTA, the parties agree to contract out of the CGA or sections 9, 12A and 13 of the FTA, respectively, and that all warranties, representations, obligations, terms and conditions implied by the CGA or sections 9, 12A and 13 of the FTA are excluded from these terms to the fullest extent permitted by law and the parties agree that it is fair and reasonable that they are bound by this clause.