

Kormax[®]

Goods
Supply
**Terms and
Conditions**

Your Trusted
Metal Cast Component
Supplier

**Enabling
Engineering
Victories**



Goods Supply Terms and Conditions – Kormax Limited

These Conditions are the terms and conditions under which Kormax Limited (us or our or we) supplies Goods to the purchaser named in the applicable order form, purchase order, quotation or invoice for the Goods (you or your). These Conditions prevail over any additional or inconsistent conditions specified by you, and no variation to these Conditions will be binding on us, unless specifically accepted by us in writing.

1. Definitions

1.1 For the purposes of these Conditions, the following terms have the following meanings:

Conditions means these goods supply terms and conditions;

Goods means the goods as more particularly described in the applicable quotation, order form, invoice, packing slip or purchase order for those goods;

GST means goods and services tax payable under the Goods and Services Tax Act 1985 (NZ); and

PPSA means the Personal Property Securities Act 1999 (NZ) (including any amendments to that legislation).

2. Quotations

2.1 No quotation for Goods will be binding on us if it is not given in writing.

2.2 Any quotation given by us for the Goods will lapse and be invalid if it has not been accepted by you by the date for acceptance specified on the quotation form. If no date for acceptance is given on the quotation form, then the quotation will lapse and be invalid if it has not been accepted by you within 30 days following the date of issue of the quotation.

2.3 We may, but are not required to, agree to extend the date for acceptance of any quotation. No extension will be binding on us unless it has been given in writing.

2.4 We may withdraw a quotation at any time before acceptance by you.

2.5 No quotation will be binding on us if the quotation was given based on incomplete, inaccurate or misleading information provided by you.

2.6 In the event of any conflict or inconsistency between any terms and conditions of any quotation and these Conditions, the relevant terms and conditions of the quotation will prevail.

2.7 We reserve the right to alter any quotation as a result of circumstances beyond our control.

3. Price

3.1 The price for the Goods will be the price set out in the applicable quotation or written order confirmation from us, or as otherwise agreed by the parties in writing. Pricing errors may be corrected at any time. All prices are in New Zealand dollars unless otherwise set out in the applicable quotation or agreed by the parties in writing.

3.2 We may also increase the price for the Goods after the date of your order to cover any increase in the cost to us of products or materials that is beyond our control and where such increase occurs between the date of the order and delivery. We will notify you in writing of any such price increase, and give you the option to cancel the order (by written notice to us) if you do not wish to accept the price increase. If you do not cancel the order within three working days of our written notification, you will be deemed to have accepted the increased price.

3.3 All prices are exclusive of GST (if any), which will be payable by you to us in addition on the rendering by us of an appropriate tax invoice.

4. Orders

4.1 All orders for Goods must be submitted to us in writing, by email, by facsimile, or by such other means as we may specify from time to time. We are not obliged to acknowledge or process any order for Goods not submitted by such means.

4.2 Your acceptance of a written quotation from us, or our written acceptance of an order form or purchase order from you, will create a legally binding order by you for the Goods.

5. Payment terms

5.1 We will invoice you for the Goods in the manner and on the dates agreed by the parties in writing. In the absence of any such written agreement we will invoice you for the Goods on or following delivery, and you must pay all such invoices in full within 20 days following the end of month in which the invoice was issued.

5.2 Notwithstanding clause 5.1, we reserve the right to require you to pay a deposit for any Goods to be provided, and our invoice for any such deposit must be paid in full before we accept an order for those Goods.

5.3 All sums due to us under these Conditions will be paid without deduction or set-off of any kind, to the credit of a bank account to be designated in writing by us, failing which:

5.3.1 we may charge interest on any outstanding amount on a daily basis at an annual rate equivalent to our banker's standard annual interest rate for commercial overdrafts plus 5%, from the due date until the date of actual payment;

5.3.2 you will reimburse us for all costs and expenses that we incur in connection with any actions or proceedings for recovery of any amounts required to be paid by you, including all reasonable accounting costs, attorney costs (on a solicitor and own client basis), court costs and debt collection costs; and

5.3.3 we may elect to terminate any orders for Goods then in progress, or to suspend any such orders until the failure to pay has been rectified.

5.4 As security for payment, we may require you to provide us with a letter of credit from a reputable bank in a form and for an amount acceptable to us prior to delivery of the Goods to you. If you do not provide us with such letter of credit, we may withhold delivery of the Goods, or cancel any order for Goods.

6. Delivery

6.1 Delivery of the Goods will take place by us delivering the Goods to the destination address specified in the applicable quotation or written order confirmation from us.

6.2 We may deliver the Goods in instalments. Delivery will be deemed complete when possession of the Goods has passed to you or your nominated agent or carrier.

6.3 Unless otherwise agreed by the parties in writing, you will reimburse us for all freight, shipping, insurance, transportation and customs clearance costs and other costs and expenses incurred by us in delivering the Goods to you, and we will invoice you for these costs and expenses at the time we invoice you for the Goods.

6.4 In the event of any delay by you in taking delivery of the Goods, we will be entitled to charge you for our reasonable costs incurred in storing them.

6.5 Any delivery or lead times given by us are estimates only, and we will not be liable for failure to deliver Goods within any estimate timeframe. Time for delivery will not be of the essence.

6.6 You must inspect the Goods upon delivery to determine whether they have been delivered in good condition. You must give written notice to us of:

6.6.1 any defects in or damage to the Goods that would be reasonably visible from any such inspection; and

6.6.2 any Goods short supplied, within seven days of delivery. Failure to do so will be regarded as an acceptance of the Goods. Additionally, the signing of a delivery docket or packing slip by you or your agents confirming that the Goods have been delivered in good condition and in the correct quantity, will be regarded as an acceptance of the Goods. Acceptance of the Goods will mean that your only rights and remedies under clause 10 in relation to those Goods will be for defects in or damage to the Goods not reasonably visible from an inspection of them.

7. Force Majeure

- 7.1 We will not be liable for any failure to perform the contract or any part of it due to an event of Force Majeure. We may cancel the order if the cost to us of supplying any Goods is increased materially as a result of such Force Majeure and the parties cannot agree on how the additional cost is to be borne. For the purposes of this clause 7, Force Majeure includes any inability to obtain supplies or labour, industrial disputes, delays, act of God, fire, flood, storm, pandemic, adverse weather conditions, act of governmental regulation or direction, or other matters beyond our reasonable control.

8. Risk and title

- 8.1 Risk of loss of or damage to the Goods will pass upon completion of delivery in accordance with clause 6.1.
- 8.2 Title in the Goods will not pass to you until all Goods provided by us to you have been paid for in full. Until such title passes:
- 8.2.1 you will keep the Goods clearly identified as our property in a separate part of your premises, in good order and condition, and fully insured with a reputable insurer for their full replacement value;
- 8.2.2 you will not sell or dispose of the Goods, other than in the ordinary course of your business;
- 8.2.3 you will return the Goods to us immediately if called upon by us to do so; and
- 8.2.4 we or our agents may, where we have any concerns about your creditworthiness or consider the Goods to be "at risk" (as defined in section 109(2) of the PPSA), enter your premises or any other place where the Goods are situated at any time in order to take possession of them, and you will indemnify us and our agents against any claim or demand that may be brought in relation to such entry and taking of possession.
- 8.3 You acknowledge that clause 8.2 is a Security Agreement that creates a Security Interest in the Goods. You agree that such Security Interest is taken in all present and after-acquired Goods supplied by us to you from time to time and in the Proceeds, as security for all amounts payable by you to us.
- 8.4 You agree to our registering a Financing Statement to Perfect our Security Interest under these Conditions, and you:
- 8.4.1 agree to promptly execute any documents and provide any information that we may require from time to time to enable us to Perfect such Security Interest; and
- 8.4.2 waive your right to receive a verification of such Financing Statement.
- 8.5 For the avoidance of doubt, the terms **Security Agreement**, **Security Interest**, **Financing Statement**, **Perfect** and **Proceeds** set out in this clause 8 will have the meanings set out in the PPSA.

9. Ownership of Tooling and Intellectual Property Rights

- 9.1 In relation to any jigs, gauges, moulds, dies, cutting equipment, patterns or other tooling used in the manufacture of the Goods (**Tooling**):
- 9.1.1 if you have provided us with the Tooling, then you will retain ownership of the Tooling; and
- 9.1.2 if we have created the Tooling, the Tooling will remain our property unless we have agreed with you in writing that you will own the Tooling.
- 9.2 If we supply any Goods to a specific completed design provided by you:
- 9.2.1 you or your third party licensors will retain ownership of all copyright, patent rights, design rights and other intellectual property rights (**Intellectual Property Rights**) in that design, and you grant to us a non-exclusive, royalty-free, sub-licensable licence to the extent necessary to enable the manufacture and supply to you of the applicable Goods; and
- 9.2.2 you will indemnify us and our affiliates, manufacturers and agents from and against any and all liabilities, losses, damages, costs and expenses incurred or suffered by them arising out of any claim by a third party alleging that our manufacture, use or supply of those Goods infringes any Intellectual Property Rights.

- 9.3 In relation to any Goods not supplied to a specific completed design provided by you, then except as otherwise agreed with you in writing:
- 9.3.1 all Intellectual Property Rights in or to those Goods (and in any Tooling relating to those Goods) will be exclusively owned by us or our third party licensors. Neither you nor any of your affiliates, agents or contractors will assert or claim ownership of any such Intellectual Property Rights;
- 9.3.2 you and subsequent purchasers of the Goods are granted a royalty-free, non-exclusive licence under such Intellectual Property Rights solely to the extent necessary to use the Goods in the manner recommended by us;
- 9.3.3 we will be free to manufacture, copy, use, sell or otherwise commercially exploit any designs, goods or products the subject of such Intellectual Property Rights as we please at our sole discretion; and
- 9.3.4 we warrant to you that to the best of our knowledge the use and supply of the Goods will not infringe any third party's Intellectual Property Rights, and we will indemnify you from and against any and all liabilities, losses, damages, costs and expenses incurred or suffered by you arising out of a breach of this warranty.

10. Warranties

- 10.1 We warrant that there are no liens, encumbrances or other interests in the Goods that would prevent title to the Goods passing to you upon payment pursuant to clause 8.2.
- 10.2 We warrant that for the warranty period specified in clause 10.3:
- 10.2.1 those Goods will be free from defects in materials and construction; and
- 10.2.2 if those Goods have been supplied to an agreed written specification, those Goods will comply with that written specification.
- 10.3 The warranty period under clause 10.2 will be 12 months following delivery of the Goods, or such other period that we may agree with you in writing.
- 10.4 No warranty is given for the Goods where any failure to comply or defect results from any of the following:
- 10.4.1 use, installation, maintenance, modification or alteration of the Goods other than as recommended or authorised in writing by us;
- 10.4.2 normal wear and tear during normal use of the Goods;
- 10.4.3 physical damage caused to the Goods following delivery;
- 10.4.4 misuse or negligence on the part of any user following delivery; or
- 10.4.5 any other circumstances we specify prior to our acceptance of the order as being outside the scope of our Goods warranty.
- 10.5 The warranties in clause 10.2 are subject to the exception in clause 6.5. Additionally, we will not be obliged to honour any warranty for so long as any amount owing to us for Goods is overdue.
- 10.6 Any modification of any Goods or attempt by any person to repair any Goods, without our prior written authorisation, will invalidate all warranties in clause 10.2 for those Goods.
- 10.7 Your sole remedy against us for any Goods that do not comply with any of the warranties in clause 10.2 will be (at our option and cost) for us to repair or replace such Goods or their defective components, or provide you with a credit or refund for such Goods, provided that:
- 10.7.1 you must notify us in writing of the non-compliance within the applicable warranty period, and no later than seven days following the date you first became aware of the non-compliance. You must also provide us with such information as we may reasonably request in relation to your warranty claim; and
- 10.7.2 you must give us the opportunity to investigate the alleged non-compliance, and you will if we request you to return to us the relevant Goods (or defective components of them) for the purposes of such inspection.

- 10.8 If we have agreed with you in writing to provide a discount on the price of the Goods in lieu of any warranty claims you may make, then you agree that the warranties in clause 10.2 will not apply to those Goods.
- 10.9 It is your responsibility to ensure that the Goods comply with all applicable legislative or regulatory requirements in the countries where they are supplied. It is also your responsibility to ensure that the Goods are suitable for the intended uses of any of your customers or other downstream purchasers or users. You will indemnify us from and against any and all liabilities, losses, damages, costs and expenses incurred or suffered by us arising out of any third party claim relating to the use of the Goods by any of your customers or other downstream purchasers or users.
- 10.10 We will not be obliged to accept the return of any Goods, except in the circumstances set out in clause 10.7. If we do agree in writing to accept the return of any Goods that are not defective or non-compliant, they must be returned to us in an original, unused, undamaged, resalable, unsoiled condition.
- 10.11 Except as expressly provided in these Conditions, we give no warranties in relation to the Goods, either express or implied, including but not limited to any implied warranties relating to quality, fitness for any particular purpose or ability to achieve a particular result. All statements, technical information and recommendations about the Goods are believed to be reliable, but do not constitute a guarantee or warranty.
- 10.12 If the Goods are acquired by you in New Zealand for the purposes of a business, then you and we agree that:
- 10.12.1 for the purposes of section 5D of the Fair Trading Act 1986 (FTA) and section 43 of the Consumer Guarantees Act 1993 (CGA), the Goods are being provided and acquired in trade; and
- 10.12.2 to the extent permitted by law, in respect of all matters covered by these Conditions, the parties are contracting out of the CGA and sections 9, 12A and 13 of the FTA.
- We do not otherwise seek to exclude any liability under the CGA.

11. Liability

- 11.1 In no event will we be liable (whether in contract, tort, negligence or in any other way) to you for:
- 11.1.1 loss of revenue or profit, loss of anticipated savings, loss of goodwill or opportunity, loss of production, loss or corruption of data or wasted management or staff time; or
- 11.1.2 loss, damage, cost or expense of any kind whatsoever that is indirect, consequential, or of a special nature, arising directly or indirectly from any Goods supplied by us to you, even if we had been advised of the possibility of such loss, damage, cost or expense, and even if such loss, damage, cost or expense was reasonably foreseeable by us.
- 11.2 In no event will our total liability under any claim of whatever nature arising directly or indirectly from the Goods supplied by us to you (including under the indemnity in clause 9.3.4) exceed the price paid by you for the specific Goods to which the relevant claim relates.
- 11.3 Nothing in these Conditions will exclude or limit our liability for death or personal injury caused by our negligence.

12. General

- 12.1 These Conditions embody the entire agreement of the parties in relation to the Goods and supersede all prior understandings, communications and representations between the parties, whether oral or written.
- 12.2 You may not assign, transfer or sub-contract any of your rights or obligations under these Conditions, without our written consent.
- 12.3 No amendment to these Conditions will be effective unless in writing and signed by an authorised representative of us.
- 12.4 The United Nations Convention on Agreements for the International Sale of Goods will not apply to the supply of any Goods under these Conditions.
- 12.5 These Conditions will be governed by the laws of New Zealand, and the parties submit to the non-exclusive jurisdiction of the Courts of New Zealand.

Please complete the form below, sign it, and return it to us via email to indicate your acceptance of these terms. Should you have any questions or wish to discuss these terms further, please do not hesitate to contact us.

Name:

Email:

Postal Address:

Delivery Address (If Different):

Signature:

Accounts Contact Person:

Accounts Email ID:

Credit Reference 1:

Credit Reference 2:

Date