

**Kormax**<sup>®</sup>

Goods  
Supply  
**Terms and  
Conditions**

Your Trusted  
Metal Cast Component  
Supplier

**Enabling  
Engineering  
Victories**



# Goods Supply Terms and Conditions – Kormax LLC

## 1. Applicability

These terms and conditions of sale (these “terms”) are the only terms that govern the sale of the goods (“goods”) by Kormax, LLC (“Kormax”) to the customer named in the applicable order form, purchase order, quotation or invoice for the goods (“customer”). That order form, purchase order, quotation or invoice (the “sales confirmation” and these terms (collectively, this “agreement”) comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These terms prevail over any of customer’s general terms and conditions of purchase regardless of whether or when customer has submitted its purchase order or such terms. Fulfillment of customer’s order does not constitute acceptance of any of customer’s terms and conditions and does not serve to modify or amend these terms.

## 2. Delivery

- 2a. The goods will be delivered within a reasonable time after the receipt of the customer’s acceptance or execution of a sales confirmation, subject to availability of goods. Any delivery or lead times given by Kormax are estimates only. Except as explicitly provided herein, Kormax shall not be liable for any delays, loss, or damage in transit. Customer’s acceptance or execution of a sales confirmation binds customer to purchase the goods, and customer is bound to pay the price(s) from that time.
- 2b. Unless otherwise agreed in writing by the parties, Kormax shall deliver the goods to the location specified by seller in the sales confirmation (the “delivery point”) using Kormax’s standard methods for packaging and shipping such goods. Customer shall take delivery of the goods upon Kormax’s written notice that the goods have been delivered to the delivery point. Customer shall be responsible for all loading costs and provide equipment and labor reasonably suited for receipt of the goods at the delivery point.
- 2c. Kormax may, in its sole discretion, without liability or penalty, make partial shipments of goods to customer. Each shipment will constitute a separate sale, and customer shall pay for the units shipped whether such shipment is in whole or partial fulfillment of customer’s purchase order.
- 2d. If for any reason customer fails to accept delivery of any of the goods, or if Kormax is unable to deliver the goods at the delivery point because customer has not provided appropriate instructions, documents, licenses or authorizations: (i) risk of loss to the goods shall pass to customer; (ii) the goods shall be deemed to have been delivered; and (iii) Kormax, at its option, may store the goods until customer picks them up, whereupon customer shall be liable for all related costs and expenses (including, without limitation, storage, and insurance).

## 3. Non-Delivery

- 3a. The quantity of any installment of goods as recorded by Kormax on dispatch from Kormax’s place of business is conclusive evidence of the quantity received by customer on delivery unless customer can provide conclusive evidence proving the contrary.
- 3b. Kormax shall not be liable for any non-delivery of goods unless customer gives written notice to Kormax of the non-delivery within 2 business days of the date when the goods would in the ordinary course of events have been received.
- 3c. Any liability of Kormax for non-delivery of the goods, as reasonably determined by Kormax in its sole, reasonable discretion, shall be limited to replacing the goods within a reasonable time or adjusting the invoice respecting such goods to reflect the actual quantity delivered.

## 4. Quotes

Any quotation provided by Kormax shall last for 30 days after its date, or if it is undated, 30 days after customer’s receipt of such quotation. Notwithstanding the foregoing, a quoted price may be increased by the amount of any increase in the cost of supply of goods which is beyond the control of Kormax and which occurs between the date of acceptance of the quotation and provision of the goods to the customer.

## 5. Shipping Dates

Delivery shall be made FOB (Delivery Point).

## 6. Title And Risk Of Loss

Title in the goods will not pass to customer until all goods provided by Kormax to customer have been paid for in full. Until such title passes, and as collateral security for the payment of the purchase price of the goods, customer hereby grants to Kormax a lien on and security interest in and to all of the right, title, and interest of customer in, to, and under the goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the Illinois uniform commercial code.

## 7. Amendments And Modifications

These terms may only be amended or modified in a writing which specifically states that it amends these terms and is signed by an authorized representative of each party.

## 8. Inspection And Rejection Of Nonconforming Goods

- 8a. Customer shall inspect the goods within 10 business days of receipt of the goods (“inspection period”). Customer will be deemed to have accepted the goods unless it notifies Kormax in writing of any nonconforming goods during the inspection period and furnishes such written evidence or other documentation as required by Kormax. “Nonconforming goods” means only the following: goods shipped do not substantially conform to the specifications in a sales confirmation.
- 8b. If Kormax agrees in writing that the goods shipped are nonconforming goods: (i) customer shall ship, at its expense and risk of loss, the nonconforming goods to Kormax’s facility located at 500 country club drive, Bensenville, 60106, il or 3351 Rauch street, Houston, 77029 tx and (ii) Kormax shall, in its sole discretion, (a) replace such nonconforming goods with conforming goods, or (b) credit or refund the price for such nonconforming goods, together with any reasonable shipping and handling expenses incurred by customer in connection therewith. If Kormax exercises its option to replace nonconforming goods, Kormax shall, after receiving customer’s shipment of nonconforming goods, ship to customer, at customer’s expense and risk of loss, the replaced goods to the delivery point.
- 8c. Customer acknowledges and agrees that the remedies set forth in section 8(b) are customer’s exclusive remedies for the delivery of nonconforming goods. Except as provided under section 8(b), all sales of goods to customer are final and made on a one-way basis and customer has no right to return goods purchased under this agreement to Kormax.

## 9. Price

- 9a. Customer shall purchase the goods from Kormax at the price(s) (the “price(s)”) set forth in the sales confirmation.
- 9b. All prices are exclusive of all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any governmental authority on any amounts payable by customer. Customer shall be responsible for all such charges, costs, and taxes; provided, that, customer shall not be responsible for any taxes imposed on, or with respect to, Kormax’s income, revenues, gross receipts, personnel, or real or personal property or other assets.

## 10. Payment Terms

- 10a. Customer shall pay all invoiced amounts due to Kormax upon receipt of Kormax’s invoice. Customer shall make all payments hereunder by wire transfer and in us dollars.
- 10b. Customer shall pay interest on outstanding balances that have not been paid within 30 days of customer’s receipt of an invoice at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly.

Customer shall reimburse Kormax for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees. In addition to all other remedies available under these terms or at law (which Kormax does not waive by the exercise of any rights hereunder), Kormax shall be entitled to suspend the delivery of any goods if customer fails to pay any amounts when due hereunder and such failure continues for 5 business days following written notice thereof and Kormax shall be entitled to require prepayment from customer prior to shipping any goods.

- 10c. Customer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Kormax, whether relating to Kormax's breach, bankruptcy, or otherwise.

## 11. Limited Warranty

- 11a. Kormax warrants to Customer that for a period of 60 days from the date of delivery of the Goods ("Warranty Period"), such Goods will materially conform to the specifications set forth in the Sales Confirmation and will be free from material defects in material and workmanship.
- 11b. Except for the warranty set forth in section 11(a), seller makes no warranty whatsoever with respect to the goods, including any (a) warranty of merchantability; (b) warranty of fitness for a particular purpose; (c) warranty of title; or (d) warranty against infringement of intellectual property rights of a third party; whether express or implied by law, course of dealing, course of performance, usage of trade or otherwise.
- 11c. Kormax shall not be liable for a breach of the warranty set forth in section 11(a) unless: (i) customer gives written notice of the defect, reasonably described, to Kormax within 5 business days of the time when customer discovers or ought to have discovered the defect; (ii) Kormax is given a reasonable opportunity after receiving the notice to examine such goods and customer (if requested to do so by Kormax) returns such goods to Kormax's place of business at Kormax's cost for the examination to take place there; and (iii) Kormax reasonably verifies customer's claim that the goods are defective.
- 11d. Kormax shall not be liable for a breach of the warranty set forth in section 11(a) if: (i) customer makes any further use of such goods after giving such notice; (ii) the defect arises because customer failed to follow Kormax's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the goods, or due to the negligence of customer or any other person following delivery of the goods; (iii) customer alters or repairs such goods without the prior written consent of Kormax; or (iv) the defect amounts to normal wear and tear arising during normal use of the goods.
- 11e. Subject to section 11(c) and section 11(d) above, with respect to any such goods during the warranty period, Kormax shall, in its sole discretion, either: (i) repair or replace such goods (or the defective part) or (ii) credit or refund the price of such goods at the pro rata contract rate provided that, if Kormax so requests, customer shall, at Kormax's expense, return such goods to Kormax.
- 11f. The remedies set forth in section 11(e) shall be the buyer's sole and exclusive remedy and seller's entire liability for any breach of the limited warranty set forth in section 11(a).

## 12. Limitation Of Liability

- 12a. In no event shall seller be liable to buyer or any third party for any loss of use, revenue or profit, or for any consequential, indirect, incidental, special, exemplary, or punitive damages whether arising out of breach of contract, tort (including negligence) or otherwise, regardless of whether such damages were foreseeable and whether or not seller has been advised of the possibility of such damages, and notwithstanding the failure of any agreed or other remedy of its essential purpose.
- 12b. In no event shall seller's aggregate liability arising out of or related to this agreement, whether arising out of or related to breach of contract, tort (including negligence) or otherwise, exceed the total of the amounts paid to seller for the goods sold under the applicable sales confirmation.
- 12c. The limitation of liability set forth in section 12(b) above shall not apply to liability resulting from any matter in respect of which liability cannot lawfully be limited or excluded.

## 13. Goods Supplied To Design

If any goods are supplied to a specific design provided by customer, customer or its third-party licensors will retain ownership of all copyright, patent rights, design rights and other intellectual property rights in that design, and customer grants to Kormax a non-exclusive, royalty-free, sub-licensable licence to the extent necessary to enable the manufacture and supply to customer of the applicable goods.

## 14. Representation And Warranties

Customer represents and warrants that (a) it has the power and authority to enter into, and to perform its obligations under, this agreement, (b) the execution and delivery of, and the performance of its obligations under, this agreement does not violate or conflict with any material agreement to which it is a party or by which it is otherwise bound, (c) this agreement constitutes the legal, valid, and binding obligation of customer, enforceable against customer in accordance with its terms, (d) this agreement has been executed by a duly authorized representative of customer, and (e) the goods will solely be used for customer's business purposes and not sold for resale.

## 15. Indemnification

Except to the extent arising from the gross negligence or willful misconduct of Kormax, customer agrees to indemnify, defend, and hold harmless Kormax and its current and future affiliates and their respective equity holders, directors, officers, affiliates, employees, agents, advisors, and representatives, and the successors and assigns of each of the foregoing (each, an "indemnitee"), from and against any and all liabilities, losses, obligations, damages, costs, and expenses (including reasonable attorneys' fees and expenses) incurred by any indemnitee as a result of any claim, action, or proceeding brought by a third party (each, a "claim") arising out of or relating to: (i) customer's or any of its employees' or agents' use of the goods, breach (or alleged breach) of the agreement, negligence or willful misconduct, or violation of applicable law; or (ii) any infringement or alleged infringement of intellectual property rights as a result of the manufacture, use or supply of any goods supplied to a specific completed design provided by customer.

## 16. Compliance With Law

Customer shall comply with all applicable laws, regulations, and ordinances. Customer shall maintain in effect all the licenses, permissions, authorizations, consents, and permits that it needs to carry out its obligations under this agreement. Kormax may terminate this agreement if any governmental authority imposes antidumping or countervailing duties or any other penalties on the goods.

## 17. Termination

In addition to any remedies that may be provided under these terms, Kormax may terminate this agreement with immediate effect upon written notice to customer, if customer: (i) fails to pay any amount when due under this agreement; (ii) has not otherwise performed or complied with any of these terms, in whole or in part; or (iii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.

## 18. Waiver

No waiver by Kormax of any of the provisions of this agreement is effective unless explicitly set forth in writing and signed by Kormax. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this agreement operates or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power, or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

## 19. Confidential Information

The terms of that certain confidentiality agreement between Kormax and customer are hereby incorporated into this agreement.

## 20. Force Majeure

If either party's failure to comply with any obligation under this agreement is caused in whole or in part by one or more force majeure events, such failure shall not constitute a breach of this agreement, and such failure shall be excused for as long as such failure is caused in whole or in part by such force majeure events. The party claiming that a force majeure event caused such failure must notify the other party in writing promptly after such party becomes aware of the force majeure event. The term "force majeure event" means labor disputes; riots or other civil disturbances; wars, coups, or invasions; governmental regulations; fires, floods, and other casualties; pandemics and epidemics; acts of god, and other similar circumstances beyond the reasonable control of such party.

## 21. Assignment

Customer shall not assign any of its rights or delegate any of its obligations under this agreement without the prior written consent of Kormax. Any purported assignment or delegation in violation of this section is null and void. No assignment or delegation relieves customer of any of its obligations under this agreement.

## 22. Relationship Of The Parties

The relationship between the parties is that of independent contractors. Nothing contained in this agreement shall be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

## 23. No Third-Party Beneficiaries

This agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of these terms.

## 24. Governing Laws And Jurisdiction

This agreement shall be governed by and construed in accordance with the laws of the state of Illinois without regard to its choice of law provisions. The parties irrevocably submit to the exclusive jurisdiction of the federal or state courts located in Cook County, Illinois in connection with any disputes arising under this agreement and waive any defense based on lack of jurisdiction, improper venue, or forum non conveniency.

## 25. Notices

All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "notice") shall be in writing and addressed to the parties at the addresses set forth on the face of the sales confirmation or to such other address that may be designated by the receiving party in writing. All notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this agreement, a notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the notice has complied with the requirements of this section.

## 26. Severability

If any term or provision of this agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

## 27. Survival

Provisions of these terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of this agreement including, but not limited to, the following provisions: limited warranty, limitation of liability, compliance with laws, confidential information, governing law and jurisdiction and survival.

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