

Standard Terms and Conditions

Definitions

“**Company**” means Cormack Holdings Pty Ltd (ABN 66 000 058 711) its subsidiaries and assigns.

“**Customer**” means the person or persons identified as the Customer on the Commercial Credit Application Form or in the absence thereof the party placing the Order with the Company.

“**Order**” means an offer by a Customer to purchase Products from the Company.

“**Products**” includes any goods or services or combination of both ordered by the Customer from the Company and supplied by the Company on the order of the Customer.

“**Unique Item**” includes any Product that is specially ordered by the Company for the Customer (whether locally or from overseas) or that is specially manufactured for the Customer, or is not a usual stocked item.

“**PPS Act**” means the *Personal Property Securities Act 2009 (Cth)* as amended from time to time.

“**PPSR**” is the Personal Property Securities Register established under Section 147 of the PPS Act.

“**Rented Pallet**” means pallets owned by independent companies that rent pallets including Chep and Loscam.

“**Writing**” includes fax email and SMS.

1. Acceptance of Order: The Company may accept any Order in whole or in part. Dispatch by the Company of Products for delivery pursuant to an Order (whether by single or multiple delivery) shall be taken as acceptance of the Order to the extent dispatched and the terms hereof current at the date of acceptance shall apply to the sale. Accepted Orders may not be varied or cancelled by the Customer and (subject to the conditions set out herein) there is no right of return.

2. Price: The price of the Products shall be as agreed between the parties or otherwise the published price, or where there is no agreed price or published price, such amount as indicated on invoices provided by the Company to the Customer. Prior to acceptance of an Order, the Company may change its published prices at any time without notice.

Products ordered are quoted on the basis of collection from the factory or store of the Company from which they are delivered. The Company may charge for freight and handling at rates dependent on distance and volume of Products supplied. The rates are subject to change at any time without notice. A fuel levy may be charged by the Company for any delivery.

A further charge of \$20 may be made by the company for all orders under any minimum order value advised by the Company. This fee and the threshold at which it applies may increase without notice.

3. Credit: The Company may accept an Order and allow credit for part or all of its value or may accept an Order and require pre-payment as a condition of delivery. Credit approval once granted may be withdrawn at any time. Where credit approval has not been granted, or is withdrawn, payment of all Products supplied is required before delivery. Where credit has been approved for the Customer, all invoices issued by the Company are due and payable no later than twenty one (21) days calculated from the end of the month in which the invoice is dated (or such other date for payment as the Customer and the Company may agree in writing).

4. Credit Policy & Default: The Company may charge interest on all amounts not paid by the Customer within the term for payment at a rate of 2% per calendar month calculated from the due date and accruing monthly therefrom until the date of payment. If the Customer defaults in payment of any invoice when due and payable, the Customer shall indemnify the Company from and against all expenses, costs and disbursements incurred by the Company in pursuing the debt including all reasonably charged legal costs on a “solicitor and own client” basis and the fees charged to the Company by any mercantile agency.

If the Customer fails to pay for the Products in accordance with invoices issued to the Customer, the Company may at its sole discretion cancel any provision of credit, reverse any rebates or discounts, require prepayment, provide details of the default to a credit reporting agency, commence legal proceedings against the client and any guarantors including interest and costs, recover and reposes goods exercise any other rights under law.

A certificate of debt signed by a representative of the Company shall be prima facie evidence of money owing by the Customer to the Company at that time, in the absence of manifest error.

The Company reserves the right to recover from the Customer any Goods and Services Tax (“**GST**”) payable in respect of supply of Products. Unless expressly included all amounts expressed or described in any agreement, price list or in invoices are GST exclusive.

Delivery of Products may not be refused by the Customer after an Order has been accepted by the Company. Where prices are stated as inclusive of delivery, delivery is to the delivery point accepted by the Company. The Customer shall make all arrangements necessary to accept delivery of the Products whenever they are tendered for delivery. In the event that the Customer is unable or unwilling to accept delivery of the Products as arranged, then the Company shall be entitled to charge a reasonable fee for redelivery. Delivery of the Products to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this agreement. Notwithstanding any specification to the contrary in the Customer’s Order the failure of the Company to deliver by a time specified by the Customer shall not entitle the Customer to treat the sale contract as breached or repudiated. The Company shall not be liable for any loss or damage or expense arising from failure by the Company to deliver the Products promptly.

5. Title: Orders are accepted on condition that ownership of the Products shall remain with the Company and shall not pass to the Customer until the Company has received in full (cash or cleared funds) all sums due to it in respect of the Products and all other sums which are or which become due to the Company from the Customer on any account. Until ownership of the Products has passed to the Customer, the Customer shall keep the Products in question as fiduciary agent and bailee for and on behalf of the Company. The Customer shall store and segregate the Products (at no cost to the Company) in such a way that they can be identified as the Company’s property, shall keep them properly stored, protected and insured and shall deliver them to the Company upon request and the Company shall be entitled to enter the premises where they are stored to retrieve them at any time and may resell such Products without the Customer’s consent.

The Customer will however be entitled to sell such Products within the ordinary course of business on condition that so long as title to such Products remain with the Company, that the Company shall legally and beneficially be entitled to the proceeds of sale that the Customer shall hold on trust for the Company in a separate account or where applicable the Customer will assign or transfer to the Company the claims the Customer has in respect of such sales. The Customer acknowledges that the Company has a security interest in the Products for the purposes of the PPS Act and to the extent applicable the PPS Act applies.

The Customer acknowledges that the Company may do anything reasonably necessary, including but not limited to registering any security interest which the Company has over the Products on the PPSR, in order to perfect the security interest and comply with the requirements of the PPS Act. The Customer agrees to do all things reasonably necessary to assist the Company to undertake the matters set out above. The Customer waives pursuant to Section 157(3)(b) of the PPS Act the right to receive notice of a verification statement in relation to any registration on the PPSR.

The Customer and the Company agree that, pursuant to Section 115 of the PPS Act, the following provisions in the PPS Act do not apply in relation to a security interest in the Products to the extent, if any, mentioned (words in this provision have the same meaning as in the PPS Act):

- i. Section 129 (disposal by purchase);
- ii. Section 125 (obligation to dispose of or retain collateral) in that the Company may extend the time for delay as the Company considers appropriate;
- iii. Section 130 (notice of disposal), to the extent that it requires the secured party to give a notice to the grantor before disposal;
- iv. Section 132(4) (statement of account if no disposal);
- v. Section 135 (notice of retention);
- vi. Section 142 (redemption of collateral);
- vii. Section 143 (reinstatement of security agreement);

Pursuant to Section 275(6) of the PPS Act and subject to Section 275(7), the Customer and the Company agree not to disclose to any interested person information pertaining to the Company’s security interest as set out in Section 275(1).

Where required by law to respond the Company may charge the Customer a reasonable sum for work and costs associated with responding to a request made under Section 275(1) of the PPS Act.

6. Unique Items: Unique Items are not eligible for return unless damaged or defective. Orders placed for Unique Items are to be supplied as per quantities run at time of production that may vary by up to 10% of the total quantity in the Order. Where Unique Items are held in inventory for the Customer or are work in progress, and the Customer discontinues normal, regular purchasing of these Unique Items from the Company, then the Customer must purchase at the then current purchase price all remaining inventory of these Unique Items within 10 days of request by the Company.

7. Pallets: Unless otherwise agreed to in writing all pallets on which Products are delivered remain the property of the Company and must be returned to the Company at the Customer’s expense in good order and condition to the factory or store of the Company from which they were delivered.

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Pallets will be deemed to be in the Customers possession until received at such factory or store. All risks and costs associated with the pallets vests in the Customer and the Customer agrees to replace the pallets with pallets of a similar type and quality or reimburse the costs thereof in respect of pallets that are not returned in good order and condition to the Company within one month of delivery of the Products.

Where Products are delivered on a Rented Pallet, the Customer must either replace the equivalent amount of Rented Pallets with the transport company delivering the Products or transfer the Rented Pallet through a valid account of the Rented Pallet company. Any Rented Pallets not replaced or transferred shall be invoiced at current replacement cost to the Customer.

8. Claims & Returns: The Customer will inspect and check all Products received and within 14 days of receipt notify the Company in writing of any shortage in quantity, defect, incorrect specification, or damage to the Products. Products must be returned in the same condition they were received. No credit or replacement will be given unless and until Products so returned have been verified as being valid for return or are defective. The Company reserves the right to recover its costs where the returned Products prove not to be valid for return or are not defective. Returned Products must be returned the factory or store of the Company from which they were delivered. All freight, handling and other charges in relation to returning Products (other than Products defective or not ordered) are the responsibility of the Customer.

9. Credit Card Recovery of Costs: A service fee may be added to the price where payment is made by way of a credit card.

10. Disputed Charges: If the Customer objects to any invoiced item, the Customer may withhold payment of the disputed amount, but only if on or before payment or the due date for payment (whichever first occurs), the undisputed amount is paid in full and notice in writing of the dispute is given to the Company, setting out the details of the amount disputed, the reasons for the dispute, and the basis for calculating the disputed amount.

The Company will investigate all disputes. If the amount is found to be payable (in whole or in part) then the Customer must pay the due amount within 7 days of receiving notice thereof from the Company and the basis of the decision. Invoiced amounts that are not objected to in writing within 30 days of the invoice date will be deemed to be correctly charged.

11. Recovery: Notwithstanding any other provision to the contrary, if any amount due by the Customer to the Company is not paid within the term for payment, the Company reserves the following rights in relation to the Products until all amounts owed by the Customer to the Company in respect of the Products and all other Products and services supplied to the Customer by the Company at any time are fully paid:

- (a) legal and equitable ownership of the Products;
- (b) to retake possession of the Products; and
- (c) to keep or resell any of the Products repossessed.

The Customer hereby grants full leave and irrevocable license without any liability to the Company and any person authorised by the Company to enter any premises where the Products may for the time being be placed or stored for the purpose of retaking possession of the Products.

12. Limitation of Liability: The law implies certain warranties into transactions which in certain circumstances cannot be excluded. Notwithstanding this (but subject to such laws as apply) the Customer acknowledges that it has not relied on any advice given or made by or on behalf of the Company in connection with the Products. The Company excludes all implied conditions and warranties from this agreement, except any warranty implied by law to the extent that they cannot be excluded ("**Non Excludable Conditions**").

The Company limits its liability:

- (a) for breach of any Non-Excludable Conditions to the extent that liability for such breach can by law be limited to the invoice cost of the Products supplied; and
- (b) for any error or omission in delivery of the Products caused by the Company to (at the Company's sole discretion) resupply of the Products affected by the breach, or the payment of the cost of resupply.

Subject to this Clause, the Company excludes all other liability to the Customer for any costs, expenses, losses and damages suffered or incurred by the Customer in connection with this agreement whether that liability lies in contract, tort (including the Company's negligence) or under statute. Without limitation, the Company will in no circumstances be liable for any indirect or consequential losses, including but not limited to loss of profits, loss of revenue, loss of business opportunity, costs or any loss of reputation. The Customer indemnifies the Company and its officers, employees, contractors and agents against any costs, expenses, losses, damages and liability suffered or incurred arising from the Customer's breach of this agreement and any negligent or unlawful act or omission of the Customer in connection with the Products.

13. Set-off: The Customer shall not be entitled to set off against or deduct from the price of Products sold any sums owed or claimed to be owed to the Customer by the Company.

14. Assignment: The Customer may not assign or subcontract any contract for the purchase of Products or its obligations under this agreement. The Company may assign or licence or subcontract all or any parts of its rights and obligations hereunder without the Customer's agreement or consent.

15. Force Majeure: The Company will have no liability to the Customer in relation to any loss, damage or expense caused by the Company's failure to complete an Order or delivery or contract, either totally or partially, as a result of any event outside of the Company's control including but not limited to fire, flood, tempest, earthquake, riot, civil disturbance, theft, crime, strike, lock-out, pandemic, disease, war, equipment, facilities, services, power or water shortage, accidents or breakdowns of plant, machinery, software, hardware or communication network or the inability of the Company's suppliers to supply necessary materials.

16. Privacy: The Company may give information about the Customer, its guarantors, directors or proprietors to a credit reporting agency for the following purposes:

- (a) to obtain a consumer credit report about the Customer, its guarantors, directors or proprietors;
- (b) allow the credit reporting agency to create or update credit information records containing information about the Customer, its guarantors, directors or proprietors;
- (c) for registration on the PPSR; and

(d) to obtain commercial credit information about the Customer, its guarantors, directors or proprietors from a credit reporting agency. The Current credit reporting agency is Equifax Australia Level 14, 100 Arthur St North Sydney, NSW 2060.

17. No Waiver: The failure by the Company to exercise, or any delay in exercising, any right, power or privilege available to it under this agreement will not operate as a waiver thereof or preclude any other or further exercise thereof or the exercise of any right or power.

18. Experimental Orders & Preliminary Work: Preliminary work and/or work produced in an experimental way at the Customer's request may be charged to the Customer at the option of the Company.

19. Property & Material Supplied by Customer: Property including Printing Plates, Moulds and all other materials supplied to the Company by, or on behalf of, the Customer to be used in preparatory and other work in and about the manufacture of Orders:

- (a) shall be stored and retained by the Company or its suppliers of same, at the exclusive risk of the Customer and the Company shall not be responsible for any loss or damage to the said goods while under its control or suppliers control, nor shall they be responsible for any insurance in relation thereto;
- (b) will not be counted or checked by the Company; and
- (c) shall be removed by the Customer within 7 days after written request by the Company, otherwise the Company is free to return the property or materials to the Customer or dispose of the said property and materials;

The Company accepts no responsibility for imperfect work caused by defects in or unsuitability of property or materials supplied by the Customer.

The Company reserves the right to retain possession of any property or materials supplied by the Customer until all expenses, accounts, liabilities and/or debts have been paid in full including, but not limited to, all outstanding invoices, stock held on Customers Order but not yet invoiced, work in progress and preparatory costs not yet charged.

20. Bar Codes: It is the responsibility of the Customer to check bar codes on receipt of goods. The Company will not be responsible for any costs or losses that may be suffered resulting from any inability of bar codes to scan correctly.

21. Artwork, Moulds & Printing Plates: Artwork, Moulds and Printing Plates will be charged to the Customer unless supplied by the Customer. Replacement sets will also be charged to the Customer if and when required.

22. Proper Law: The agreement is governed by and will be construed in accordance with the laws of the State of New South Wales and the parties agree to submit to the exclusive jurisdiction of the Courts of the State of New South Wales.

23. Entire Agreement: This document represents the entire agreement between the parties and may not be amended except in writing signed by each of the parties.

24. General: If any term of this agreement shall be invalid, void, illegal or unenforceable, the remaining provisions shall not be affected, prejudiced or impaired.

All amounts quoted or invoiced are in Australian dollars (unless otherwise stated). Payments remitted in foreign currency must include all related bank charges and currency conversion costs.