

# New Zealand Terms and Conditions of Sale

Last updated 7 December 2022



## 1. Terms and conditions

- 1.1 These terms and conditions of sale (**Terms**) govern the supply of all Goods by Vulcan Steel Limited and/or Ullrich Aluminium Co Limited (**Vulcan**) to a customer (**Customer**) and together with any terms set out in any quotation issued by Vulcan and any guarantee entered into between Vulcan and the Customer will constitute the entire agreement between Vulcan and the Customer. In the event of any inconsistency between these Terms and any terms set out in a quotation, these Terms will prevail.
- 1.2 In these Terms, "**Goods**" means all goods and/or services supplied by Vulcan to the Customer, or ordered by the Customer but not yet supplied, and includes goods described on any quotation, invoice, purchase order or any other document issued by Vulcan.

## 2. Quotations and orders

- 2.1 Prices quoted by Vulcan are based upon prices, rates and charges in effect on the date of quotation or any other such date as specified in the quotation. All quotations are valid for the time period specified on the quotation and Vulcan may vary or withdraw a quotation at any time.
- 2.2 Orders for Goods may only be cancelled or varied with Vulcan's prior written consent (with may be given at Vulcan's sole discretion).

## 3. Supply of Goods

- 3.1 The Customer may elect to have the Goods delivered by Vulcan or pick-up the Goods from Vulcan's premises. Such election must be made and notified to Vulcan at the time the Customer places an order.
- 3.2 If the Customer elects to have the Goods delivered, the cost of delivery of the Goods to the advised delivery address is payable by the Customer.
- 3.3 Vulcan will bear the loss or damage to the Goods in transit where delivery is elected by the Customer and made by Vulcan or Vulcan's nominated transportation carrier. In all other cases, the Customer is responsible for loss or damage occurring during transit.
- 3.4 If the Customer elects to pick up the Goods, any pick-ups must be made at Vulcan's specified premises during normal business hours, unless otherwise agreed between the parties in writing.
- 3.5 Vulcan will not be liable for any loss or damage, including consequential loss or damage, arising from any delay in delivery or failure to deliver the Goods, either whole or in part, due to circumstances beyond Vulcan's control.
- 3.6 The Customer will inspect the Goods upon delivery or pick-up.
- 3.7 If the Customer considers any Goods to be defective and/or that an order has not been fulfilled because any Goods are short in quantity, length and/or weight (**Defect**) then the Customer must give written notice to Vulcan of such Defect within seven days of delivery of the Goods (**Claim**).
- 3.8 On receipt of any Claim in accordance with clause 3.7, the Customer will give Vulcan an opportunity to inspect the Goods in order to investigate the Claim. If, following investigation of the Claim, Vulcan considers the Goods to be defective, then Vulcan may (a) pick-up the Goods or request that the Customer returns the Goods to Vulcan; and (b) elect (at Vulcan's sole discretion) to: (i) replace the Goods; or (ii) refund the price of the Goods, which refund may be limited to the amount which Vulcan is able to recover from Vulcan's supplier. Vulcan will have no further liability to the Customer following any action taken by Vulcan under this clause 3.8.

## 4. Payment

- 4.1 Vulcan will submit invoices to the Customer for Goods to be supplied to the Customer. Unless otherwise specified in Vulcan's invoice, the Customer must pay Vulcan the amount set out in the invoice in full on the 20th day of the month following delivery.
- 4.2 The Customer must pay Vulcan by electronic funds transfer to such bank account as nominated by Vulcan.
- 4.3 All payments must be (a) in New Zealand dollars; (b) for the full amount of the invoice and not subject to any deduction for any currency conversion or other bank fee; and (c) free of any deduction, withholding, set-off, counterclaim, restrictions or conditions except to the extent the deduction or withholding is required by law.
- 4.4 Should the Customer fail to pay any Vulcan invoice by the required due date and in the manner provided in these Terms, Vulcan may charge the Customer: (a) default interest (**Default Interest**). Default interest will be calculated at the base overdraft facility rate charged by Vulcan's bankers from time to time. Default Interest will accrue on a daily basis from the due date to the date of actual payment, both before and after any court judgment to pay; and (b) for any legal, debt collection and other expenses incurred by Vulcan in relation to recovery of such debt.

- 4.5 Vulcan reserves the right to offset any amount due by the Customer against any amount payable by Vulcan to the Customer.

## 5. Ownership, risk and insurance

- 5.1 Notwithstanding any period of credit, legal and beneficial title and ownership of any Goods supplied by Vulcan to the Customer will remain with Vulcan until the Customer has paid: (a) for those Goods in full; and (b) all other amounts owing in accordance with clause 4.4.
- 5.2 Until ownership of the Goods passes to the Customer, the Customer agrees: (a) to hold the Goods in trust for Vulcan as Vulcan's bailee; and to store the Goods at the Customer's cost separately from other goods and clearly distinguish and identify the Goods as the property of Vulcan.
- 5.3 In the event that the Customer defaults in the payment of any amount owed to Vulcan, the Customer irrevocably grants Vulcan (including its employees and agents) the right to: (a) enter (without notice) the Customer's premises or any other premises where the Goods are known, or reasonably believed, to be stored; and (b) search for and repossess the Goods. Vulcan will not be liable to the Customer in any way for the exercise of its rights under this clause 5.3.
- 5.4 Notwithstanding that ownership of the goods has not passed to the Customer, the Customer agrees that risk in the Goods will pass to the Customer when the Goods are delivered to the Customer.

## 6. Warranties and liability

- 6.1 The Customer agrees that the Goods are supplied to the Customer for business purposes in terms of sections 2 and 43 of the Consumer Guarantees Act 1993 (**CGA**) and that the provisions of the CGA do not apply to the supply to the Customer.
- 6.2 Vulcan warrants that Goods supplied will be of merchantable quality. Vulcan does not warrant that the Goods are fit for a particular purpose. All other conditions and warranties implied by law are expressly excluded.
- 6.3 Vulcan will not be liable to the Customer in any event for any for any loss of business, business interruption, loss of business information, errors, loss of profits, damages based on a third-party claim or for any other special, incidental, indirect or consequential loss or damage suffered or incurred by the Customer as a result of anything done or omitted to be done under these Terms.

## 7. Personal Properties Securities Act

- 7.1 The Customer unconditionally and irrevocably waives its right under the Personal Properties Securities Act 1999 (**PPSA**) to (a) receive a copy of any financing statement or financing change statement; (b) receive notice that Vulcan intends to sell the Goods or to retain the Goods as enforcement of the security interest (as defined in the PPSA) granted to Vulcan under these Terms; (c) object to Vulcan proposal to retain the Goods in satisfaction of any obligation owed by the Customer; (d) redeem the Goods; and (e) where any Goods becomes an accession as defined in the PPSA, apply to the court for an order concerning the removal of the accession.
- 7.2 The Customer agrees not to consent to or enter into any agreement which permits any supplier or other person to register a security interest in respect of the Goods (whether an accession or otherwise) until title and ownership of the Goods passes to the Customer.

## 8. General

- 8.1 Vulcan reserves the right to review and amend these Terms at any time (**Amendments**). Any Amendments will be posted on Vulcan's website ([www.vulcan.co](http://www.vulcan.co)) and the "**last updated**" date will be changed. By continuing to order Goods from Vulcan, the Customer agrees to be bound by the Amendments. Vulcan recommends that its Customers regularly review these Terms to see any updates or changes to Vulcan's Terms.
- 8.2 The Customer may not assign its rights and obligations under these Terms without the prior written consent of Vulcan.
- 8.3 The Customer will notify Vulcan of any (a) change in its ownership or effective control; (b) material change in the nature of the Customer's business; and (c) change of name, no later than seven days prior to such proposed change coming into effect. Vulcan will be under no obligation to provide credit terms, or supply any Goods, to the Customer following a change of ownership, control or business.
- 8.4 These Terms will be governed by and will be interpreted in accordance with the laws of New Zealand law. The parties submit to the exclusive jurisdiction of the New Zealand courts.
- 8.5 Please contact [accounts@vulcan.co](mailto:accounts@vulcan.co) if you have any questions, concerns or complaints in relation to these Terms.