

Vulcan Australia Terms and Conditions of Sale

Last updated 1 December 2023



1. Terms and conditions

- 1.1 These terms and conditions of sale (**Terms**) govern the supply of all Goods by Vulcan Steel (Australia) Pty Limited (ABN 61 100 061 283) (**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 and/or the Customer's directors, partners or trustees 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, to the extent the delay or failure was 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 to the extent permitted by law and without affecting any rights the Customer has under the Australian Consumer Law.
- 3.9 Where Vulcan reasonably considers that: (a) the Customer may not be able to pay any amounts owed to Vulcan; (b) Vulcan may not be able to obtain credit insurance for the Customer's account; (c) there has been or may be fraudulent activity associated with the Customer's account; (d) the Customer has or may suffer an insolvency event or change of control; or (e) the continued provision of credit facilities may cause loss to Vulcan, Vulcan may suspend or withdraw the credit facilities provided to the Customer without notice.

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 no more than 30 days from the end of the month during which any given purchase is made.
- 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 Australian 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 If the Customer disputes any invoice, it will use its best endeavours to give Vulcan notice of such dispute within seven days of receipt of the invoice, but will pay the undisputed part of the invoice. For the avoidance of doubt, this clause does not preclude the Customer from raising a dispute after seven days. On notification of any dispute, the parties will agree to enter good faith negotiations to resolve any amount in dispute.
- 4.5 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.
- 4.6 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 (b) 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 by Vulcan to the Customer or picked-up by the Customer at Vulcan's premises (as applicable).

6. Warranties and liability

- 6.1 The Customer warrants that all purchases of Goods from Vulcan are for commercial purposes only and, accordingly, the provisions of the National Consumer Credit Protection Act 2009 do not apply to the Customer.
- 6.2 Vulcan warrants that Goods supplied will be of merchantable quality. To the extent permitted by law, Vulcan does not warrant that the Goods are fit for a particular purpose. To the extent permitted by law, 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 consents to Vulcan effecting a registration under the Personal Properties Securities Act 2009 (**PPSA**) on the Australian Personal Properties Securities Register (**PPSR**) in relation to any security interest arising under or in connection with or contemplated by these Terms.
- 7.2 The Customer: (a) waives its right to receive notice of a verification statement in relation to any registration by Vulcan on the PPSR; (b) agrees to promptly execute any documents, provide all relevant information, fully cooperate with Vulcan and do any other act or thing that Vulcan requires to ensure that Vulcan has a perfected security interest in, and has priority over any other security interests in, the Goods or otherwise; (c) agrees that, until all monies owing to Vulcan are paid in full, it will not sell the Goods or grant any other security interest (whether an accession or otherwise) in the Goods; and (d) will not register a financing change statement in respect of the security interest without Vulcan's prior written consent.
- 7.3 If Chapter 4 of the PPSA would otherwise apply to the enforcement of a security interest arising in connection with these Terms, the Customer agrees that the following provisions of the PPSA will not apply to the enforcement of these terms: (a) section 95 (notice of removal of accession), to the extent that it requires the Company to give a notice to the Customer; (b) section 96 (when a person with an interest in the whole may retain an accession); (c) agrees that, until all monies owing to Vulcan are paid in full, it will not sell the Goods or grant any other security interest (whether an accession or otherwise) in the Goods; and (d) section 125 (obligation to dispose of or retain collateral); (e) section 130 (notice of disposal), to the extent that it requires the Company to give a notice to the Customer; (f) section 132(3)(d) (contents of statement of account after disposal); (g) section 132(4) (statement of account if no disposal); (h) section 134(i) (retention of collateral); (i) section 135 (notice of retention); (j) section 142 (redemption of collateral); and (k) section 143 (reinstatement of security agreement).
- 7.4 Notices or documents required or permitted to be given to Vulcan for the purposes of the PPSA must be given in accordance with the PPSA.
- 7.5 Vulcan agrees with the Customer not to disclose information of the kind mentioned in section 275(1) of the PPSA except in circumstances required by sections 275(7)(b) to 275(7)(e).
- 7.6 If Vulcan receives any notice in relation to the Customer under section 64 of the PPSA, all outstanding amounts may, at Vulcan's discretion, become immediately due and payable.
- 7.7 The Customer agrees to reimburse, upon demand, Vulcan for all costs and/or expenses incurred or payable by Vulcan in relation to registering or maintaining any financing statement, releasing in whole or in part the Company's security interest or any other document in respect of any security interest relating to the Goods.
- 7.8 In these Terms the following words have the respective meanings given to them in the PPSA: financing statement, financing change statement, perfected, proceeds, register, registration, security interest and verification statement

8. General

- 8.1 Vulcan reserves the right to review and amend these Terms at any time (**Amendments**). The Terms which apply to an order are those in effect on the date the order is made. Any Amendments will be posted on Vulcan's website (www.vulcan.co) and the "last updated" date will be changed. By continuing to order Goods from Vulcan after the Amendments take effect, 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. Such consent is not to be unreasonably withheld by 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 the State in which the Goods were delivered to or picked-up from and, where applicable, the Commonwealth of Australia. The Customer submits to the non-exclusive jurisdiction of the courts of that State.
- 8.5 Please contact accounts.aus@vulcan.co if you have any questions, concerns or complaints in relation to these Terms.