

# Vulcan Australia Terms and Conditions of Sale – changes explained

December 2023



#	Clause ref	15 February 2023 version	1 December 2023 version	Explanation for change
1	Cl 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.	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.	Wording inserted to balance the exclusion of liability and to make clear the exclusion only applies to the extent that the delay or failure was due to circumstances outside Vulcan's control.
2	Cl 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.	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.	Wording inserted to make it clear Vulcan is not excluding any rights it cannot lawfully exclude.
3	Cl 4	No clause.	New clause 4.4: If the Customer disputes any invoice, it will give 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.	There was no provision in the previous Terms and Conditions of Sale for dealing with disputed invoice amounts. Vulcan wanted to make it clear what the process is for dealing with any disputed invoices.
4	Cl 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.	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.	Wording inserted to make it clear Vulcan is not excluding or limiting any guarantees that it cannot lawfully exclude or limit.
5	Cl 8.1	Vulcan reserves the right to review and amend these Terms at any time ( <b>Amendments</b> ). Any Amendments will be posted on Vulcan's website ( <a href="http://www.vulcan.co">www.vulcan.co</a> ) 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	Vulcan reserves the right to review and amend these Terms at any time ( <b>Amendments</b> ). 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 ( <a href="http://www.vulcan.co">www.vulcan.co</a> ) and the "last updated" date will be changed. By continuing to order Goods from Vulcan after 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.	Wording inserted to make it clear that despite any new Amendments, the Terms that will apply to particular orders will be those that were in effect at the time the order was made.
6	Cl 8.2	The Customer may not assign its rights and obligations under these Terms without the prior written consent of Vulcan.	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.	Wording inserted to make it clear that consent will not be withheld unreasonably.
7	Cl 3.9	Vulcan reserves the right to suspend or withdraw credit facilities at any time without notice.	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 reserves the right to may suspend or withdraw credit facilities provided to the Customer at any time without notice.	Vulcan wanted to make it clear in what circumstances Vulcan would need the right to suspend or withdraw credit facilities.

# Vulcan Australia Personal Guarantee and Indemnity Form – changes explained

December 2023



#	Clause ref	15 February 2023 version	1 December 2023 version	Explanation for change
8	Cl 1	The Guarantor(s) unconditionally and irrevocably guarantee to Vulcan the due and punctual payment by the Customer of all amounts which are now owing, or may from time to time be owing, by the Customer to Vulcan ( <b>Debt</b> ).	The Guarantor(s) unconditionally and irrevocably guarantee to Vulcan the due and punctual payment by the Customer of all amounts which are now owing, or may from time to time be owing, by the Customer to Vulcan under the credit facility ( <b>Debt</b> ).	Wording inserted to make it clear that the amounts owing or which may be owing by the Customer to Vulcan are those provided under the credit facility.
9	Cl 2	The Guarantor(s) unconditionally and irrevocably indemnify Vulcan against all losses, damages and costs (including legal and debt collection costs) that Vulcan may suffer or incur in relation to the Debt.	The Guarantor(s) unconditionally and irrevocably indemnify Vulcan against all losses, damages and costs (including legal and debt collection costs) that Vulcan may suffer or incur in relation to the Debt as a result of any default by the Customer under the credit facility or the enforcement of this Guarantee (except to the extent caused by Vulcan's wilful misconduct or negligence).	Wording inserted to make it clear what indemnity relates to.
10	-	No clause.	New clause 9: The Guarantor(s) may request a release of this Guarantee by giving written notice to Vulcan and such release will only be effective following acknowledgment of receipt by Vulcan. Any release will not discharge the Guarantor(s) obligations arising up to the date of the release. If a Guarantor is released, Vulcan may suspend or terminate the Customer's credit facility until another satisfactory guarantee is provided to Vulcan.	There was no provision in the previous Guarantee and Indemnity Form for dealing with any release of the Guarantee. Vulcan wanted to make it clear what the process is for any discharge of the Guarantor's obligations.