

VULCANITE TERMS AND CONDITIONS OF SALE

In these standard trading conditions (**conditions**):

Goods means all materials, goods and services provided by us, including spare parts for commercial, heavy and light passenger vehicles, vibration dampeners and suspension components, and any other goods or services supplied by us to you at your request; **you, your** and similar expressions, refer to your customer or proposed customer; and **we, us** and similar expressions, refer to Vulcanite Pty Limited (ACN 000 055 069), Unit N1, 391 Park Road, Regents Park, NSW 2143, +61 (2) 8889 3999.

These conditions govern all supplies of Goods by us to you, unless otherwise clearly agreed in writing signed by us and you.

Quotations

- Any quotation is merely an invitation to you to place an order with us. We issue quotations based on information supplied by you to us. If the information you supply is not correct, you may order Goods which conform to our specifications but are not suitable for your purpose (see also clause 39).
- If you offer to purchase Goods based on a quotation from us, then your offer is subject to these conditions.
- We reserve the right to correct any obvious errors in any quotation, tender or price list, whether technical or otherwise.

Not obliged to accept orders

- We are not obliged to accept any order from you. If you place an order with us then it becomes binding from the moment that we accept it even if we do not tell you that it has been accepted. We may accept an order by written confirmation or by delivery, and in the case of delivery, only as to the portion of the order actually delivered.
- If an order is accepted, we will carry out the order and you must pay for the Goods in accordance with these conditions.

Our conditions overrule any order form

- These conditions apply and prevail even if they are inconsistent with anything said or implied in any earlier or later order form or similar document.

Non-cancellation of orders and non-return of Goods

- No returns or cancellations will be accepted without prior written agreement from us, which we may provide or withhold in our discretion (including imposing conditions).
- We cannot consider any request to cancel an order unless you return the Goods to us in original packaging with our original invoice number. If we initially agree to accept delivery of any returned Goods, you acknowledge that is to allow us to inspect the Goods to see if they are in good order and condition and to ensure it is commercially realistic for us to re-sell the Goods, and this does not mean we are bound to agree with the requested cancellation.
- Goods supplied to special order are not returnable.
- We do not accept cancellation of any order for, or return of any used parts.

Prices and Invoices

- All prices are in Australian dollars. Irrespective of where you are located, goods are sold ex-warehouse and invoiced at the price we charge on the date of despatch from our premises.
- You must pay all freight, packing, delivery and insurance costs, if we agree to deliver Goods to you. You must also pay any sales tax, goods and services tax, stamp duty and all other taxes, excises and duties that are payable relating to the supply of Goods by us.

Payments

- You must pay for all orders on or before delivery, unless we give you credit, in which case you must pay for all invoices within 30 days after the date of invoice.

Credit

- We are not obliged to give you credit merely because we have previously given you credit.
- If we decide to give you credit, we will provide you with notice of our decision. Credit will be given on the basis of these conditions and any additional conditions that we set for giving you credit.
- We may decline to give you further credit at any time. If we do so, these conditions and any credit conditions continue to apply to any amounts which you then owe to us.
- We may, subject to the terms of any additional document setting out the terms on which we provide you credit, withdraw any credit provided to you and require that all monies are payable to us on demand.

Overdue payments

- If any amount you owe us is not paid by the due date then:
 - all money that you owe us on any account becomes immediately payable despite any previously agreed credit conditions;
 - we may suspend supply or cancel any outstanding orders we have accepted from you;
 - we may charge you interest on any amount owing from the due date until payment, calculated daily, at a rate equal to the sum of the Cash Rate Target published by

the Reserve Bank of Australia plus a margin of 7%. Interest may be capitalised each month so that cumulative interest may be payable; and
(d) you are liable for all our costs, losses and expenses relating to recovering overdue payments from you, including mercantile agents' and lawyers' fees and expenses that we incur.

Delivery

- We will make all reasonable efforts to deliver the Goods to you at the time(s) specified in accordance with DDP (Incoterms 2010) or as otherwise agreed in writing between you and us. Any additional cost incurred by your failure to accept the Goods at that time will be borne by you.
- You are required to inspect the Goods as soon as practicable after delivery has occurred.

Risk and title

- We remain the owner of all Goods supplied to you until you have paid us all amounts owing in respect of all Goods supplied.
- Until you become the owner of Goods in accordance with clause 21:
 - you hold them as agent and bailee for us and you owe a fiduciary duty to us in respect of them including to hold and maintain the Goods in good condition;
 - you must if required by us store the Goods on your premises separately from your own goods or goods of any other person and in a manner which makes them readily identifiable as our Goods;
 - we may terminate your right to resell or use the Goods forthwith on written notice of termination being delivered to your place of business;
 - we may retake possession, if (i) you default in paying any part of the price or associated charges for them; or (ii) you become or resolve to become subject to any form of insolvency administration.
- We may for the purpose of recovery of our Goods enter by our employees or agents on any premises where the Goods are stored or where they are reasonably thought to be stored and may repossess them. This permission is irrevocable and you agree that our employees or agents so entering are not trespassing.
- Goods you hold which meet the description of goods on an invoice for which payment has not been made is, in the absence of evidence to the contrary, treated as goods to which we have retained title. We may exercise our remedies under these provisions against those goods.
- The debt you owe to us at the date of repossession of goods is, as between the parties, taken to include any payment we have previously received which might be claimed to be void under any law relating to bankruptcy, liquidation or the protection of creditors. This is so whether or not a claim has been made.
- Unless agreed otherwise in writing between you and us, you will bear all risk for the Goods from the time we deliver the Goods to you.
- You may re-supply the Goods to any other person or entity before you have paid all amounts which are owing to us provided that:
 - the re-supply is in the ordinary course of your business;
 - all money received by you for the Goods will be held by you on trust for us; and
 - you must either:
 - pay the money to us immediately when it is received by you; or
 - deposit the money into a bank account and hold it as trustee for us.
- We will not be liable, in contract or in tort or otherwise, for any costs, damages, expenses or losses incurred by you or any third party as a result of any action taken under clauses 0 to 27 (inclusive).

PPS Law

- Clauses 29 to 38 (inclusive) apply to the extent that these conditions provide for or contain a 'security interest' for the purposes of the Personal Property Securities Act 2009 (Cth) (**PPS Law**) (or part of it).
- You agree, in addition, to the extent possible under PPS Law, that all collateral which is at any time subject to our security interest secures as a 'purchase money security interest' (**PMSI**) the purchase price of all collateral supplied to you. Clauses 29 to 38 do not limit what other amounts are secured under these conditions.
- You agree that payments will be applied in the following order:
 - to obligations that are not secured, in the order in which those obligations were incurred;
 - to obligations that are secured, but not by PMSIs, in the order in which those obligations were incurred;
 - to obligations that are secured by PMSIs, in the order in which those obligations were incurred.
- We may register our security interest as a PMSI. You must do anything (such as obtaining consents and signing documents) which we require for the purposes of:
 - ensuring that our security interest is enforceable, perfected and otherwise effective under the PPS Law;
 - enabling us to gain first priority (or any other priority agreed to by us in writing) for our security interest; and
 - enabling us to exercise rights in connection with the security interest,

and to assure performance of your obligations, you hereby give us an irrevocable power of attorney to do anything we consider you should do under these conditions.

- Our rights under these conditions are in addition to and not in substitution for our rights under other law (including the PPS Law) and we may choose whether to exercise rights under these conditions, and/or under such other law, as we see fit.
- In respect of Goods that are not used predominantly for personal, domestic or household purposes, the following provisions of the PPS Law do not apply and, for the purposes of section 115 of the PPS Law are "contracted out" of these conditions:
 - sections 95 (notice of removal of accession to the extent it requires us to give a notice to you), 96 (retention of accession), 125 (obligations to dispose of or retain collateral);
 - section 130 (notice of disposal to the extent it requires us to give a notice to you);
 - section 132(3)(d) (contents of statement of account after disposal);
 - section 132(4) (statement of account if no disposal);
 - section 135 (notice of retention);
 - section 142 (redemption of collateral); and
 - section 143 (re-instatement of security agreement).
- The following provisions of the PPS Law confer rights on us:
 - section 123 (seizing collateral);
 - section 126 (apparent possession);
 - section 128 (secured party may dispose of collateral);
 - section 129 (disposal by purchase); and
 - section 134(1) (retention of collateral).

You agree that in addition to those rights, we will, if there is default by you, have the right to seize, purchase, take possession or apparent possession, retain, deal with or dispose of any Goods, not only under those sections but also, as additional and independent rights, under these conditions and you agree that we may do so in any manner we see fit including (in respect of dealing and disposal) by private or public sale, lease or licence.

- You waive your rights to receive a verification statement in relation to registration events in respect of commercial property under section 157 of the PPS Law.
- You and we agree not to disclose information of the kind that can be requested under section 275(1) of the PPS Law. You must do everything necessary on your part to ensure that section 275(6)(a) of the PPS Law continues to apply. The agreement in this clause 37 is made solely for the purpose of allowing us the benefit of section 275(6)(a) and we will not be liable to pay damages or any other compensation or be subject to injunction if we breach this clause 37.
- You must not dispose or purport to dispose of, or create or purport to create or permit to be created any 'security interest' (as defined in PPS Law) in the collateral other than with our express written consent.

Sale by specification

- You must ensure that the Goods we supply are suitable for your purposes before using the Goods for those purposes. Except to the extent expressly specified by us in writing, we sell Goods by specification and you decide for what purpose to use or re-supply the Goods. To the extent that we expressly specify in writing a purpose for which our Goods are suitable, we sell our Goods for use only as specified for that purpose. We are not liable for any loss or damage caused by persons seeking to use Goods for a purpose for which they were not intended to be used.

Variations in specifications

- We reserve the right to vary the specifications or performance criteria of any Good from time to time and to obtain Goods from different sources, at our absolute discretion. We may do that without telling you provided we have reasonable grounds for believing that the alternate Good offered is substantially similar to that previously offered or represents an improvement.

Intellectual Property

- All intellectual property including trade marks (registered or unregistered), registered designs, patents and copyright used on or in relation to the Goods belongs to us (**Our Intellectual Property**).
- Except to the extent necessary to utilise the Goods, you must not use Our Intellectual Property for any purpose without our express written authorisation.

Warranties against defects

- Our Goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the Goods repaired or replaced if the Goods fail to be of acceptable quality and the failure does not amount to a major failure.
- In addition to any statutory rights and remedies which you may have under the Australian Consumer Law, we warrant that the Goods are free of manufacturing defects and will remain so for a period of twelve (12) months from the date of shipment of the Goods by us to you (**Warranty Period**).
- During the Warranty Period and as our sole liability to you under this warranty against defects, we agree, upon being satisfied that the goods are defective and, at our option, to either repair or replace the Goods.

46. Goods presented for repair may be replaced by refurbished goods of the same type rather than being repaired. Refurbished parts may be used to repair the goods.
47. To make a warranty claim you must, at your cost, send:
- (a) the Goods which you believe to be defective; and
 - (b) digital photographs and an engineering summary in respect of the alleged failure of the Goods,
- to our premises located at Unit N1, 391 Park Road, Regents Park, NSW 2143, for our inspection and, if approved, processing under this warranty.
48. If you are unable to return Goods to us in accordance with clause 47, you must contact us on +61 (2) 8889 3999, or by email at Sales-AsiaPacific@vulcanite.com, to arrange an 'on site' inspection. You will be responsible for all travel costs reasonably incurred by us in carrying out such an inspection.
49. These warranties are for your benefit only, and may not be transferred.
50. If you are located in Australia, and you acquire Goods from us for the purpose of re-supply, and you choose to give one of your customers a warranty against defects, that warranty must comply with the requirements prescribed by the Competition and Consumer Act 2010 (Cth) (**CCA**) or other legislation.

Limitation of Liability

51. Terms, conditions, warranties and guarantees implied by law, including the Australian Consumer Law, that cannot be excluded, restricted or modified apply to these conditions to the extent required by that law.
52. We exclude all other terms, conditions, warranties and guarantees which would otherwise be implied concerning the activities covered by these conditions.
53. You acknowledge that you do not rely on any representation, warranty, guarantee or other provision made by or on our behalf which is not expressly stated in any contract between us and you.
54. Where we are permitted to limit our liability, our sole liability to you for negligence, tort, or breach of contract, breach of statutory duty, or breach of a condition, warranty or guarantee, is limited at our option:
- (a) in respect of goods, to:
 - (i) replacement of the goods, or supply of equivalent goods; or
 - (ii) repair of the goods; or
 - (iii) payment of the cost of replacing the goods or of acquiring equivalent goods; and
 - (b) in respect of services, to:
 - (i) supplying of the services again; or
 - (ii) payment of the cost of having the services supplied again.

Other damages claims excluded

55. Subject to clause 54, in no event will we or any of our officers, directors, employees, shareholders, agents or representatives be liable to you or any third party for any special, indirect, incidental, exemplary or consequential loss or damage, or loss of goodwill or reputation, loss of profits or revenue, loss of anticipated benefits or savings, loss of any prospect or business opportunity, loss of production or other business interruption or loss of data in any way relating the supply or non-supply of our Goods, even if we have been notified of the possibility or likelihood of such damages.

Indemnity

56. You indemnify us against all claims, demands, damages, penalties, costs, charges and expenses to which we may become wholly or partially liable where we manufacture or sell Goods according to your specification and, the manufacture or sale of those Goods by us involves an infringement or alleged infringement of the intellectual property rights of any third party.

Unexpected delay

57. We are not responsible for delay caused by something outside our reasonable control, including our inability to secure continuation of supply of the Goods. Without limiting those general words, that applies where we have problems due to accidents, strikes, transport difficulties or stock shortages.

Estimated delivery times

58. Delivery times are estimates only and we are not liable for delays in delivery.

Certificate of debt

59. Statements of account we send in the ordinary course of business by ordinary post to your last known address are prima facie evidence of the amounts you owe us. You are bound by any certificate signed by any of our directors or solicitors which shows any amount or calculation relevant to what you owe us, except where there is an error obvious on the face of the certificates.

Dispute Resolution

60. If a dispute arises out of or relates to these terms, or the breach, termination, validity or subject matter thereof, or as to any claim in tort, in equity or pursuant to any domestic or international statute or law, either party may notify the other that such a dispute has arisen.
61. A party claiming that a dispute has arisen must give written notice to the other parties to the dispute specifying the nature of the dispute.
62. On receipt of such notice, the parties to the dispute must within seven (7) days of receipt of the notice seek to resolve the dispute.
63. If the dispute is not resolved within seven (7) days or within a further period as the parties agree then the dispute is to be resolved by arbitration as follows:
- (a) where all parties to the dispute are located within Australia – in accordance with the Rules for Domestic Arbitration of the Australian Commercial Disputes Centre; or
 - (b) where a party to the dispute is located outside Australia – in accordance with the Arbitration Rules of the Australian Centre for International Commercial Arbitration.
64. The venue or seat for an arbitration set out in clause 63 will be Sydney, Australia, and the arbitration will be conducted in English.

65. The parties agree that an award handed down by an arbitrator in connection with an arbitration under clause 63 will be binding on all parties to the arbitration.

Variation of these conditions

66. These conditions may be changed by us from time to time by us giving you notice of the change. Notice is deemed given (whether or not actually received) when we do any of the following: (a) send notice of the change to you at any address (including an email address) supplied by you; (b) or publish the amended conditions on our web site at www.vulcanite.com.au.

Applicable law

67. Any agreement containing these conditions is deemed to be an agreement made in and governed by the law New South Wales, Australia and the parties submit their disputes to the non-exclusive jurisdiction of the courts of New South Wales, Australia.

Statutory successor

68. In these conditions a reference to a statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws amending, consolidating or replacing it, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute.

Severance

69. Any provision of this agreement which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this agreement enforceable, unless this would materially change the intended effect of this agreement.

Not a consumer contract

70. You agree that your acquisition of the Goods is not for personal, domestic or household use or consumption, and any binding commitment incorporating these conditions is not a 'consumer contract' for the purposes of the CCA.

United Nations Convention on Contracts for the International Sale of Goods

71. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods will have no force or effect on these conditions.