

# AGREEMENT FOR THE SUPPLY OF GOODS AND SERVICES



VULKAN Australia Pty Ltd

35 Pile Road | Somersby NSW 2250 | Australia

## 1. DEFINITIONS AND INTERPRETATION

### DEFINITIONS

- a. "Buyer" means any person, firm or company who, or which places an Order with VULKAN for the sale of Goods and/or the supply of Services.
- b. "Contract" means a contract formed under clause 15 and includes these terms and conditions, Quotations and Orders.
- c. "Goods" means the articles or things or any of them described in the Order and includes their packaging and any replacement goods.
- d. "Order" means the written or verbal order placed by the Buyer for the purchase of Goods or supply of Services.
- e. "Quotation" means a written or verbal quotation provided by VULKAN to the Buyer.
- f. "Scope of Works" means in relation to the Services, a written work scope agreed by VULKAN and the Buyer.
- g. "Services" means the technical advice or maintenance services given or provided by or on behalf of VULKAN in connection with the Goods.
- h. "VULKAN" means Vulkan Australia Pty Ltd ACN 160 986 569..

### 2. INTERPRETATION

Headings are for convenience only and do not affect interpretation. The following rules of interpretation apply unless the context requires otherwise:

- a. a reference to a party in a contract or these terms and conditions includes the party's successors and permitted assigns;
- b. a reference to a right or obligation of 2 or more persons confers that right, or imposes that obligation, as the case may be, jointly and severally;
- c. a reference to any legislation or to any provision of any legislation includes any modification or re-enactment of it, any legislative provision substituted for it and any regulations and statutory instruments issued under it;
- d. mentioning anything after includes or including does not limit what else might be included;
- e. no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of these terms and conditions.

## 3. ENTIRE AGREEMENT

4. These terms and conditions govern all Contracts for the sale of Goods and /or supply of Services by VULKAN to the Buyer and, except as modified in accordance with clause 5 constitute the entire agreement in connection with the sale of Goods and/or supply of Services. All other terms and conditions, express or implied are excluded to the fullest extent permitted by law including terms and conditions of or provided by the Buyer.
5. No modifications or variations to these terms and conditions, included in any Contract, specification or other document, will bind VULKAN unless expressly agreed to in writing by an authorised employee of VULKAN.
6. These terms and conditions supersede any terms and conditions which have previously governed a Contract for the sale of Goods and/or supply of Services by VULKAN to the Buyer.
7. All clerical errors are subject to correction and will not bind VULKAN.
8. For the avoidance of doubt, the terms of the United Nations Convention on Contracts for the International Sale of Goods will not apply to any Contract.

## 9. QUOTATIONS

10. All Quotations by VULKAN are valid only for the period stated in the Quotations, but VULKAN may vary or withdraw a Quotation at any time.
11. Any Quotation given by VULKAN will not constitute a contractual offer, but is only an invitation to treat.
12. VULKAN's brochures and catalogues are published as sources of general information only, do not constitute contractual offers and are not binding on VULKAN.
13. All illustrations, drawings and other documents and all description or data relating to weight, dimensions, performance and consumption and other description or data provided by VULKAN are approximate only.
14. These terms and conditions will prevail to the extent of any inconsistency between the Quotation or Order and these terms and conditions.

## 15. ORDERS

16. Orders for Goods and/or Services will not bind VULKAN until accepted in writing by an authorised employee of VULKAN at which time a binding Contract for the sale of Goods and/or Services comes into existence.
17. VULKAN reserves the right to accept Orders in whole or in part.
18. Any Order not accepted by VULKAN in the manner prescribed will be regarded as having been refused by VULKAN.
19. Once VULKAN has accepted an Order, the Buyer must not alter or modify the Order without obtaining the prior written consent of an authorised employee of VULKAN.

## 20. SERVICES

21. VULKAN will use its reasonable endeavours to provide the Services in accordance with the Scope of Works.
22. If VULKAN is required to perform the Services at any of the Buyer's sites:
  - a. VULKAN is responsible for ensuring that its representatives who are present at the relevant site conform with the Buyer's policies and all legislation relating to occupational health and safety; and
  - b. the Buyer must, at the sites:
    - i. provide a hazard-free environment;
    - ii. provide to all of VULKAN'S representatives occupational health and safety induction as required by law; and
    - iii. comply with all applicable laws and regulations that relate to health and safety at work and any other relevant regulations.

## 23. INTELLECTUAL PROPERTY

24. VULKAN or its related bodies corporate retains legal and beneficial title and copyright to all drawings, illustrations and other documents prepared by or on behalf of VULKAN. The Buyer must not make such document available to any third parties and must be returned to VULKAN immediately upon request.
25. The Buyer must not use any trade mark or trade names applied to or used by VULKAN in relation to Goods in any manner without VULKAN's prior written approval.
26. VULKAN and the Buyer agree that the sale and purchase of the Goods does not confer on the Buyer any licence or rights in respect of any patent, design, trade mark or copyright incorporated or subsisting in any Goods which is the property of VULKAN or any of its related bodies corporate.

## 27. PRICES

28. Unless otherwise agreed in writing, prices for the Goods are ex-works, i.e. VULKAN is responsible for making the Goods available at its factory but the Buyer will bear the cost of loading the Goods and the cost of having them delivered to their destination and VULKAN is not liable for turnover tax, value added tax, goods and services tax, custom duties, levies, surcharges, impositions, storage, handling, insurance or any other charges of any nature whatsoever.
29. Unless fixed prices have been agreed in writing, the Goods will be supplied at the prices stated in Order confirmations by VULKAN and are based on costs prevailing at the time of the Order confirmations. Services will be supplied at the published rates current at time of delivery.
30. For repeat Orders, prices stated in previous Order confirmations are not binding on VULKAN.
31. Prices quoted in published price lists or by VULKAN representatives are subject to change without notice and are not binding on VULKAN.
32. When GST is payable by VULKAN in respect of a taxable supply made by VULKAN to the Buyer, the Buyer must pay VULKAN, in addition to the GST-exclusive price, the amount on account of GST shown in the tax invoice issued by VULKAN. The terms "GST", "supply" and "tax invoice" have the same meaning as under the A New Tax System (Good and Services Tax) Act 1999 (Cth). 33.The price may be adjusted by VULKAN if:
  - a. VULKAN carries out additional services outside the Scope of Works or if the Services require changes, deletions or modifications arising from:
    - i. requests by the Buyer;

# AGREEMENT FOR THE SUPPLY OF GOODS AND SERVICES

# VULKAN

VULKAN Australia Pty Ltd

35 Pile Road | Somersby NSW 2250 | Australia

- ii. site conditions that could not reasonably have been foreseen by VULKAN;
  - iii. a change in legislative requirements or a request or requirement of an authority;
  - iv. an act, occurrence or event not within the control of VULKAN including, fire, flood, industrial disputes, government restrictions or other causes which are not reasonably within the control of VULKAN; or
  - v. any other change outside the reasonable control of VULKAN; or
- b. the Services are dependent on services provided by third party contractors to VULKAN and the third party contractor increases the cost of the services.

## 34. PAYMENT

35. The Buyer must make payment for the Goods or Services:
- a. on the terms of payment set out in the invoice for those Goods or Services; or
  - b. if there are no terms of payment set out in the invoice, within 30 days from the date of the invoice.
36. The time of payment is of the essence of the Contract.
37. If the Buyer fails to make payment in accordance with clause 35 ("due date"), without prejudice to any other remedy, the Supplier may charge interest on any overdue payment at a rate of 2% per month (to accrue from day to day). The Buyer acknowledges that the interest charge is a genuine pre-estimate of Vulkan's loss attributable to the Buyer's failure to make payment by the due date.
38. If the Buyer fails to make payment by the due date or if VULKAN is in receipt of a credit reference which it regards in its absolute discretion to be unsatisfactory then it may give notice to the Buyer that the Buyer must make payment for all Goods prior to despatch from VULKAN's premises, and all Services prior to VULKAN performing the Services.
39. All payments are to be made by electronic funds transfer and must be made in the currency specified in the invoice. 40. All payments must be made without deduction or set off of any kind.
41. If the circumstances described in clauses 82 or 94 occur, all unpaid balances owing to VULKAN by the Buyer will become a debt immediately due and payable to VULKAN despite any other provision in these terms and conditions.
42. The Buyer indemnifies VULKAN on demand against all costs, charges, expenses and legal costs incurred by VULKAN in recovering sums owed by the Buyer.
43. VULKAN is not obliged to make delivery on any unfilled Order before the payment of due invoice amounts (including any default interest) has been paid in full to VULKAN. VULKAN will not be deemed to be in default on a delivery as a result of this clause.

## 44. RETENTION OF TITLE

45. VULKAN will retain property in and title to all Goods supplied to the Buyer until VULKAN has received payment in full for those Goods and all the Services.
46. Until property in and title to the Goods passes to the Buyer under clause 45:
- a. the Buyer will hold the Goods as fiduciary bailee and agent for VULKAN;
  - b. the Buyer will insure the Goods against all usual risks and for full replacement value and the Buyer will hold on trust for VULKAN any insurance monies received by the Buyer for Goods owned by VULKAN;
  - c. the Buyer will store the Goods separately, clearly identified as VULKAN's property and in a manner to enable them to be identified;
  - d. the Buyer will not pledge or allow any lien, charge, Security Interest (as defined by clause 86) or other interest to arise over the Goods;
  - e. the Buyer may sell the Goods in the ordinary course of business, provided that the Buyer will be agent for VULKAN in any sale if Goods are sold. The Buyer must account to VULKAN for part of the proceeds of any such sale equal to the amount owing by the Buyer to VULKAN for those Goods and must hold these proceeds on trust for VULKAN. VULKAN will not be bound by any contract between the Buyer and the Buyer's purchaser; and
  - f. Where the Buyer processes or commingles the Goods into other goods or property, VULKAN takes title to the other goods and or property as well.
47. VULKAN's other rights as an unpaid seller will not be affected by VULKAN retaining title to Goods supplied until the Goods have been paid for in full by the Buyer.
48. If:
- a. the Buyer has not paid the purchase price to VULKAN for the Goods by the due date; or
  - b. the Buyer has not paid the purchase price for the Goods and the Buyer enters into

bankruptcy, liquidation, a composition with its creditors, has a receiver or manager appointed over all or any part of its assets, enters into administration, or becomes insolvent,

49. the Buyer must deliver the Goods to VULKAN upon demand. If the Buyer does not comply with a demand within 48 hours of receipt, VULKAN may enter the Buyer's premises at any time to do all things necessary in order to take possession of the Goods. The Buyer will also pay on demand all costs, including legal costs on a full indemnity basis associated with the exercise of VULKAN's rights under this clause.

## 50. TRANSFER OF RISK

51. The Goods are at the Buyer's risk upon despatch from VULKAN's factory, even if transportation is undertaken by VULKAN (whether gratuitously or for consideration), or VULKAN has agreed to pay freight or carry out installation.
52. Insurance against loss of or damage to the Goods in the course of transit will be effected by VULKAN only if requested in writing by the Buyer and will be charged to the Buyer's account.
53. VULKAN will not be liable for any loss of or damage to the Goods in the course of transit, whether due to VULKAN's negligence or otherwise.
54. If despatch is delayed due to circumstances beyond VULKAN's control, the risks are transferred to the Buyer from the time the Buyer is notified (whether in writing or orally or otherwise) of the readiness of the Goods for despatch. VULKAN will however effect that the insurance will be for the Buyer's account.
55. Despite any other clause in these terms and conditions, VULKAN is not liable to the BUYER in the event of any failure to arrange insurance.

## 56. DELIVERY

57. The delivery period will begin on the date when all details pertaining to the Order have been confirmed.
58. The delivery period will be deemed to be complied with when VULKAN notifies the Buyer that the Goods are ready for despatch.
59. If owing to industrial disputes, operational breakdowns, delayed supply of raw materials or operating materials, strikes, lock-outs or any other cause beyond VULKAN's control (whether of a like nature or not) VULKAN is unable to deliver the Goods or complete the Services within the delivery period then VULKAN will be entitled to a reasonable extension of time which at the very least will be equal to the time lost by reason of the intervening cause or circumstance. This applies even where the delivery period has already been exceeded at the time of occurrence of any of the above. If any intervening cause or circumstances render delivery of the Goods or Services impossible or unreasonable, then VULKAN is released from the obligation to deliver.
60. If modifications are requested by the Buyer after VULKAN has accepted the Order, the delivery period will begin on the day when all further details pertaining to the Order have been clarified.
61. If for any reason the Buyer is unable to take delivery of the Goods after VULKAN has notified the Buyer of the readiness of the Goods for despatch, VULKAN may store the Goods until their actual despatch. Where the Goods are stored at VULKAN's premises, the Buyer will pay to VULKAN at least 5% of the invoice value of the Goods stored (including insurance if effected). VULKAN has the option to store the Goods outside its own premises, in which case the Buyer will be liable for the storage charges payable. Alternatively, VULKAN may rescind the Contract and claim damages from the Buyer.
62. VULKAN may be entitled to make delivery by instalments and these terms and conditions will be severable as to such instalments. All such instalments, when separately invoiced, will be paid for by the Buyer independent of the delivery of subsequent instalments.
63. Compliance with the delivery period by VULKAN is subject to the fulfilment of the Buyer's contractual obligations.
64. Delay in delivery or any other default in respect of a delivery will not relieve the Buyer from any obligation to accept or pay for Goods that have been delayed or in respect of any other delivery.
65. Subject to clause 57, delivery dates will not be varied once they have been agreed, without the prior written consent of an authorised employee of VULKAN. If VULKAN agrees to postpone delivery, the relevant Goods will be stored at the Buyer's risk and VULKAN reserves the right to impose a weekly storage charge of [5] % of the net invoice value. Where delivery is postponed for more than 3 months, VULKAN may increase the price for the Goods at VULKAN'S discretion, to reflect VULKAN's then ruling list price.

# CONDITIONS OF SALE



VULKAN Australia Pty Ltd

35 Pile Road | Somersby NSW 2250 | Australia

## 66. WARRANTY

67. VULKAN warrants that the Goods will be free from defects in materials and workmanship for 12 months from the date of risk transferring to the Buyer under clause 51.
68. The Goods come with guarantees that cannot be excluded under the Australian Consumer Law. The Buyer is entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. The Buyer is 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.
69. The Buyer must notify VULKAN in writing of a warranty claim. VULKAN, in its' sole discretion, will confirm whether the Goods must be returned to VULKAN or if VULKAN will attend the Buyer's premises. Written notices must be sent to: Vulkan Australia Pty Ltd, 12 Wollong Street, Gosford NSW 2250, Australia.
70. All returns must be accompanied by the invoice number under which the Goods were supplied and the date of purchase.
71. The warranty period for replacements or repaired parts is 12 months and will not affect the warranty period of the original Goods supplied. The warranty period of the original Goods supplied will be extended by the period of time which any interruption in the Buyer's operation is caused by the repair or replacement.
72. Where notice of a defect has in VULKAN's opinion been justifiably given, VULKAN's liability is limited in accordance with clause 75. To the extent permitted by law, all other costs will be borne by the Buyer.
73. This warranty is in addition to and does not limit, exclude or restrict the Buyer's rights under the Competition and Consumer Act 2010 (Cth) or any other law that may apply.

## 74. LIABILITY

75. To the fullest extent permitted by law, any liability of VULKAN to the Buyer including but not limited to the liability for special, consequential, indirect or incidental damages or for breach of any term, condition, warranty, undertaking, inducement, guarantee or representation whether express, implied, statutory or otherwise relating to this Contract or to the Goods or Services will be limited at VULKAN'S option, to any one or more of the following:
  - a. in the case of the Goods:
    - i. the replacement of the Goods or the supply of equivalent goods to the Goods;
    - ii. the repair of the Goods;
    - iii. the payment of the cost of replacing the Goods or acquiring equivalent goods to the Goods; or
    - iv. the payment of the cost of having the Goods repaired; and
  - b. in the case of Services:
    - i. the supplying of the Services again; or
    - ii. the payment of the costs of having the Services supplied again.
76. To the fullest extent permitted by law and subject to clause 75, VULKAN will under no circumstances be liable to the Buyer for any loss, damage or expense, sustained or incurred by the Buyer or any other party, whether direct or indirect, special, consequential, incidental or punitive losses or damages whether in contract, tort (including without limitation negligence), equity, under statute or on any other basis, and whether or not such loss or damage was foreseeable. The term "consequential damages" will include economic loss including actual or anticipated profits, business interruption, loss of use, revenue, reputation and/or data, costs incurred, and loss or damage to property or equipment.

## 77. BUYER'S RIGHT TO RESCIND

78. The Buyer will be entitled to terminate the Contract if:
  - a. VULKAN is materially in default of delivery within the meaning of clause 56; and
  - b. the Buyer has granted VULKAN a reasonable extension of time with the express statement in writing that upon expiration of the extension period the Buyer would not accept the Goods under the Contract; and
  - c. the extension period has expired.
79. The Buyer will be entitled to terminate the Contract if through any fault of VULKAN a reasonable period of time has been granted to VULKAN to rectify a defect for which VULKAN is responsible under the terms and conditions of the Contract but the period of time has elapsed without any rectification being effected. The Buyer will also be entitled to terminate the Contract if it is

impossible or VULKAN is unable to rectify the defect.

80. A "Request for the Return of Goods for Credit" form must be submitted, and the request approved, before returning Goods for credit. All Goods returned for credit without authority will be returned at the Buyer's cost. A 10% restocking charge will apply to all items returned for credit.
81. All other rights of the Buyer are excluded.

## 82. VULKAN'S RIGHT TO RESCIND

83. In the event of unforeseen circumstances within the meaning of clause 56, VULKAN will be entitled to rescind the Contract and the Buyer will not be entitled to claim any damages.
84. VULKAN reserves the right immediately to terminate or suspend VULKAN'S performance of the whole or part of any Contract for the supply of Goods and/or Services without incurring any liability to the Buyer in any of the following circumstances:
  - a. the Buyer fails to take delivery of or to pay for Goods and/or Services by the due date or otherwise breaches any other term of the Contract or these terms and conditions;
  - b. the Buyer enters into bankruptcy, liquidation or a composition with its creditors, has a receiver or manager appointed over all or any part of its assets, enters into administration or becomes insolvent;
  - c. VULKAN notifies the Buyer of having reasonable grounds for suspecting that an event in clause 84.b has occurred or will occur, or that the Buyer will not pay for Goods and/or Services on the due date;
  - d. there has been a substantial increase in VULKAN'S costs of manufacture and supply of Goods and/or Services between the date of the Contract and the date of delivery or despatch arising from circumstances beyond VULKAN'S reasonable control where the Contract is for a fixed price and VULKAN and the Buyer have failed to reach agreement on a reasonable adjustment in the price for remaining deliveries to recognise such increase within 30 days of VULKAN notifying the Buyer of such increase; or
  - e. contractual performance by either VULKAN or the Buyer is delayed or prevented due to any cause or circumstance.
85. Termination by VULKAN under clause 84 is without prejudice to VULKAN'S other remedies and VULKAN'S right to recover payment from the Buyer for any Goods and/or Services previously provided by VULKAN.

## 86. PPSA

87. In this clause 86:
  - a. "PPSA" means the Personal Property Securities Act 2009 (Cth); and
  - b. the terms "Proceeds", "Register", "Purchase Money Security Interest", "Security Agreement", "Security Interest", "Verification Statement", "Financing Statement" and "Financing Change Statement" will have the meanings given to them in the PPSA.
88. The Buyer:
  - a. acknowledges that these terms and conditions and each Contract constitutes a Security Agreement for the purposes of the PPSA;
  - b. grants a security interest to VULKAN in all Goods (and the Proceeds) previously supplied by VULKAN to the Buyer and in all future Goods (and the Proceeds) supplied by VULKAN to the Buyer; and
  - c. acknowledges that the Security Interest granted in accordance with clause 88.b is a Security Interest for the purposes of the PPSA.
89. The Buyer:
  - a. acknowledges that VULKAN may register its Security Interest in the Goods (and the Proceeds) as a Purchase Money Security Interest on the Register; and
  - b. must execute documents and do such further acts and things and provide such further information as may be required by VULKAN to enable registration of the Security Interest granted by the Buyer on the Register, or to perfect or correct any registration.
90. The Buyer agrees that to the fullest extent permitted by law, VULKAN owns, and the Buyer waives any rights it may have to anything installed in or affixed to the Goods, including any rights it might otherwise have under Part 3.3 of the PPSA. 91. The Buyer agrees that where the PPSA applies to action taken by VULKAN in relation to the Goods, the Buyer:
  - a. agrees that sections 116(2), 120, 125, 142 and 143 of the PPSA will not apply; and
  - b. waives its right to receive any notices VULKAN is required to give the Buyer under the PPSA (to the extent that the notice can be excluded) and includes any right to receive a notice under sections 95, 118(1)(b), 121(4), 123(2), 130, 132(3)(d), 132(4) and 135 of the PPSA and any Verification Statements.

# CONDITIONS OF SALE



VULKAN Australia Pty Ltd

35 Pile Road | Somersby NSW 2250 | Australia

## 92. ASSIGNMENT

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93. The Buyer must not assign or transfer the Contract or any part of it to any other party without VULKAN's prior written consent.
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## 94. BANKRUPTCY OR LIQUIDATION

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95. If the Buyer:
- being an individual, at any time becomes bankrupt, or has a receiving order or administration order made against the Buyer or makes any composition or arrangement with, or for the benefit of the Buyer's creditors, or makes any conveyance or assignment for the benefit of the Buyer's creditors or purports to do so, or any application is made under the relevant insolvency laws in force for sequestration of the Buyer's estate, or a trust deed is granted by the Buyer on behalf of the Buyer's creditors; or
  - being a company, passes a resolution, or the court makes an order that the company be wound up (not being a member's winding up for the purpose of reconstruction or amalgamation) or if a receiver, or manager on behalf of a creditor, is appointed, or if circumstances arise which entitle the court or a creditor to appoint a receiver or manager, of which entitle the court to make a winding-up order, then VULKAN will: reject the Order summarily by notice in writing without compensation to the Buyer, or give any such receiver or liquidator or other person the option of carrying out the Contract.
96. The exercise of any of the rights granted to VULKAN under clause 95 hereof will not prejudice or affect any right of action or remedy which has accrued or will accrue to VULKAN.
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## 97. SEVERABILITY

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98. In the event that any provision of this Contract is void or legally unenforceable, it will be severed from the remaining provisions of this Contract, which remain valid and binding between the parties.
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## 99. JURISDICTION

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100. Any dispute arising out of or in connection with this Contract, including any question regarding its existence, validity or termination, will be referred to and finally resolved by arbitration in Australia in accordance with the Commercial Arbitration Act 2010 (NSW) which rules are deemed to be incorporated by reference into this clause.
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## 101. PROPER LAW OF CONTRACT

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The governing law of this Contract will be the law of New South Wales, Australia, and both parties submit to the non-exclusive jurisdiction of the courts of that state.

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