

## Terms of Trade

### 1. Definitions

Unless the context otherwise requires, the following definitions shall apply to these terms of trade:

“**Fulton Hogan**” means Fulton Hogan Limited and any related companies that have supplied the goods or services and shall include the successors and assigns of those companies.

“**Client**” means the client who purchases Goods or Services from Fulton Hogan and shall include the client’s trustees and executors if an individual or its successors, permitted assigns or administrators.

“**Goods**” means any goods provided by and/or manufactured by Fulton Hogan.

“**Personal Information**” means any information about an identifiable individual (as defined under the Privacy Act).

“**PPSA**” means the Personal Property Securities Act 1999, and associated regulations, as amended from time to time.

“**PPSR**” means the Personal Property Securities Register under the PPSA.

“**Privacy Act**” means the Privacy Act 2020 and any subsequent amendments to that legislation.

“**Services**” means any services provided by Fulton Hogan.

“**Terms**” means the terms and conditions of the supply set out in this document, including any variation to these Terms.

### 2. Acceptance of Terms

- 2.1. All quotations are made and all orders for Goods and/or Services are accepted by Fulton Hogan on and subject to these Terms and any special terms and conditions which are agreed to by Fulton Hogan in writing. Unless otherwise agreed by Fulton Hogan in writing, previous dealings between Fulton Hogan and the Client or the imposition of additional or alternative terms and conditions by the Client shall not vary or replace these Terms or be deemed to do so.
- 2.2. No deductions, retentions, back charges or set-offs are to be made by a Client to a written quotation issued by Fulton Hogan.
- 2.3. Fulton Hogan may withdraw, revoke or vary a written quotation at any time prior to the Client submitting an order which accepts the offer contained in the quotation.
- 2.4. A separate contract (“**Contract**”) will be formed each time Fulton Hogan accepts an order for or otherwise agrees to supply Goods and/or Services.
- 2.5. A Contract to supply Goods and/or Services to the Client commences at the time that Fulton Hogan agrees to supply the Goods and/or Services to the Client. This may not be the date the order is received by Fulton Hogan.
- 2.6. Fulton Hogan may, in its complete and unfettered discretion, accept or reject, in whole or in part, any order for Goods and/or Services. Even if Fulton Hogan accepts an order and despite the existence of a Contract, Fulton Hogan may, in its complete and unfettered discretion, refuse to supply Goods and/or Services (without incurring any liability to the Client).

### 3. Price

- 3.1. The price of Goods and/or Services shall be as agreed between the Client and Fulton Hogan, or in an order or accepted quotation as applicable. Unless otherwise stated, prices are exclusive of all taxes and charges (for which the Client will be liable) and do not include the cost of delivery of Goods.
- 3.2. The price of Goods and/or Services specified by Fulton Hogan in a quotation:
  - (a) Will remain valid for 30 days unless otherwise specified; and

(b) Is subject to any other conditions specified in the quotation.

3.3. If, prior to the delivery of Goods, there is an increase in the cost of producing and/or delivering the Goods, Fulton Hogan may increase the price of those Goods.

#### **4. Payment**

4.1. Unless Fulton Hogan grants credit to the Client and subject to Fulton Hogan's right to withdraw credit, the Client must pay for the Goods and/or Services on or immediately prior to delivery.

4.2. Where the Client has a credit facility with Fulton Hogan, the Client shall ensure that payment is made in accordance with the terms of the credit facility and in all cases by the 20<sup>th</sup> of the month following the date of invoice, or such other date as agreed in writing.

4.3. Fulton Hogan may charge interest on overdue amounts from the due date until the date payment is received (inclusive). The interest rate shall be Westpac Banking Corporation's Indicator Lending Rate plus 5% per annum and shall be calculated on a daily basis. All payments will first be applied to the interest due. If the Client defaults in making any payment Fulton Hogan may also charge the Client all costs including legal costs (on a solicitor client basis), debt collection charges and court costs incurred by Fulton Hogan in recovering outstanding monies.

4.4. Fulton Hogan may set off any amount owed by the Client or its related companies against any amount of money owed, or may become owing to the Client by Fulton Hogan or its related company and the Client waives any equivalent right to set off.

4.5. Payments made by credit card may be subject to a surcharge.

4.6. Fulton Hogan reserves the right to suspend any discount or rebate and to restrict or withhold the supply of further Goods and/or Services to the Client if these Terms are not strictly adhered to.

#### **5. Withdrawal of Credit**

5.1. Fulton Hogan may at any time in its sole discretion withdraw the provision of credit to the Client.

#### **6. Delivery and Return**

6.1. Delivery of Goods shall be deemed to be made to the Client when the Goods are first dispatched from Fulton Hogan's premises or collected by the Client or the Client's agent. All carriers of Goods are deemed to be agents of the Client.

6.2. Fulton Hogan is entitled to suspend future deliveries until the Client has paid for all previous Goods and/or Services supplied by Fulton Hogan (whether payment is due or not).

6.3. If Fulton Hogan is unable to deliver the Goods or perform a Service because of any cause beyond its control (including any force majeure event) it may suspend delivery or cancel the Client's order without incurring any liability for loss or damage suffered by the Client.

6.4. Goods will only be accepted for return with the prior approval of Fulton Hogan. Freight and all other costs associated with the return of Goods will be at the Client's expense unless otherwise agreed in writing by Fulton Hogan.

#### **7. Risk**

7.1. Goods are at the sole risk of the Client upon delivery in accordance with clause 6.1 whether received by the Client or not, whether or not there is a delay in delivery and even though ownership of the Goods may not have passed to the Client.

7.2. The Client shall at all times insure the Goods and keep them insured for their full insurable value against all insurable causes including loss or damage by fire and theft. If the Goods are lost, damaged or destroyed then the Client agrees to make a claim against the insurance policy with respect to the lost, damaged or destroyed Goods and to immediately pay the proceeds received to Fulton Hogan, and the Client will remain liable to Fulton Hogan for any shortfall in the insurance proceeds.

**8. Ownership**

- 8.1. The Client grants to Fulton Hogan a security interest in the Goods, and in any proceeds arising from the sale of the Goods, as security for all amounts owing to Fulton Hogan and the performance of the Client's obligations under these Terms.
- 8.2. Ownership in the Goods shall not pass to the Client until the Client has paid for the Goods in full (including any interest, costs and expenses incurred in respect of those Goods) and any proceeds of sale of Goods that Fulton Hogan has not been paid for shall belong to Fulton Hogan.
- 8.3. Notwithstanding the provisions of clause 8.2 regarding Fulton Hogan's ownership of any sale proceeds, until the ownership in the Goods has passed to the Client, the Client shall not be entitled to sell or deliver possession of the Goods to any other person.

**9. Enforcement and PPSA**

- 9.1. The Client irrevocably gives Fulton Hogan and its agents the right to enter upon the Client's premises (including leased premises), without giving notice and without being in any way liable to the Client, if Fulton Hogan has cause to exercise any rights it has under section 109 of the PPSA.
- 9.2. The Client indemnifies Fulton Hogan for any and all costs associated with the enforcement of these Terms, including legal costs on a solicitor/client basis. This includes but is not limited to the cost of any debt collection procedures for which the Client will be liable on top of the outstanding debt.
- 9.3. On the enforcement of any security interest created by these Terms to which the PPSA applies, sections 114(1)(a), 133 and 134 of the PPSA shall not apply. The Client waives any rights it may have under sections 116, 117(1)(c), 119, 120(2), 121, 125, 126, 127, 129, 131, 132, 133 and 134 of the PPSA on enforcement of any such security interest.
- 9.4. The Client waives its right under the PPSA to receive any verification statement from Fulton Hogan.
- 9.5. The Client shall immediately notify Fulton Hogan in the event that the Client changes its name and/or address.

**10. Representations and Warranties**

- 10.1. To the maximum extent permitted by law, all representations, warranties, terms and conditions (including any representation, warranty, term or condition expressed or implied by law or otherwise) not expressly included in these Terms are hereby expressly excluded from the contractual arrangements between Fulton Hogan and the Client and are of no effect. Without limiting the generality of the foregoing, the provisions of the Consumer Guarantees Act 1993 and any other applicable consumer protection legislation shall not apply to the supply of Goods and/or Services by Fulton Hogan to the Client where the Client acquires, or holds himself or herself out as acquiring, the Goods and/or Services for the purposes of a business.
- 10.2. If Fulton Hogan shall be under any liability whatsoever to the Client then whether such liability be in contract, tort (including negligence or for personal injury) or otherwise and notwithstanding any relief or remedy to which the Client may be entitled at law or in equity, such liability shall be limited to the price at which the Goods and/or Services are supplied to the Client or the actual loss or damage suffered by the Client, whichever shall be the lesser.
- 10.3. Under no circumstances will Fulton Hogan be liable for any financial or economic loss or any indirect or consequential loss of any kind whatsoever.

**11. Use of Information and Privacy**

- 11.1. The Client and Fulton Hogan recognise they are each 'agencies' pursuant to the Privacy Act and owe obligations when collecting, using, storing and disclosing Personal Information. The Client and Fulton Hogan, therefore, agree that they must meet all obligations owed under the Privacy Act when operating pursuant to these Terms.
- 11.2. The Client agrees that Fulton Hogan may collect information about the Client from any person,

including any credit assessment or debt collection agency, for any purpose relevant to undertaking Fulton Hogan's business with the Client, including credit assessment and debt collecting, and the Client consents to any person providing Fulton Hogan with such information.

- 11.3. The Client agrees that Fulton Hogan may use any information it has about the Client relating to the Client's creditworthiness for the purpose of assessing whether to grant credit to the Client and as otherwise permitted by these Terms and (in the case of Personal Information) the Privacy Act.
- 11.4. Without limiting the provisions of clauses 11.2 and 11.3, the Client understands that:
- (a) Fulton Hogan may ask for, and hold the Client's Personal Information including (but not limited to): the Client's name, email address, phone number(s), Driver Licence number or Passport number and date of birth;
  - (b) Fulton Hogan collects information (including Personal Information) about the Client for the purpose of (i) obtaining a credit report on the Client to help assess the Client's creditworthiness for the purpose of Fulton Hogan opening or reviewing a trading account for the Client, and (ii) registering the security interest created by clause 8.1 under the PPSA, and (iii) undertaking enforcement action if the Client fails to make any payment due or otherwise breaches these Terms;
  - (c) Should the Client not provide any information requested pursuant to clause 11.4(a) above, or if any of the information provided is incomplete, or if Fulton Hogan believes in its absolute discretion the Client's creditworthiness may be a risk, Fulton Hogan [shall be entitled to refuse the Client's application for a trading account.
  - (d) Fulton Hogan may disclose the Client's information (including Personal Information) to (i) the credit checking bureau of Fulton Hogan's choice ("**Bureau**") and the Bureau will hold that information on their system and use it to provide their credit reporting service, (ii) the Registrar of Personal Property Securities and the Registrar will hold that information on the PPSR which will be available for searching by the public in accordance with the PPSA, and in the event of the Client's default in payment obligations (iii) to a debt collection agency of Fulton Hogan's choice;
  - (e) The Bureau will provide Fulton Hogan with information about the Client for the purposes outlined in clause 11.4(b), and when other users of the Bureau use the credit reporting service the Bureau may give the information to those users too;
  - (f) Fulton Hogan may use the Bureau's credit reporting services in the future for purposes related to the provision of credit to the Client (including personal credit checks against the Client), and this may include the use of monitoring services to receive updates if any of the information held about the Client changes that could affect the decisions made about the provision of credit to the Client;
  - (g) If the Client defaults in the Client's payment obligations to Fulton Hogan, information about that default may be disclosed to the Bureau who may provide such information to other users of that service other than the Client;
  - (h) The Client has a right of access to, and may request correction of, Personal Information of the Client's held by Fulton Hogan about the Client. . Fulton Hogan will provide the Bureau's contact details to the Client upon request if the Client wishes to contact the Bureau;;
  - (i) Fulton Hogan will hold any Personal Information collected pursuant to this clause for up to seven years after the date in which these Terms or any Contract between the Client and Fulton Hogan terminates; and
  - (j) If the Client is a body corporate it will ensure that if the Personal Information of any personnel of the Client is provided to Fulton Hogan, that such personnel are aware of this clause 11.

## 12. Intellectual Property

- 12.1. All intellectual property rights in the Goods or arising out of the performance of the Services

are and shall remain the property of Fulton Hogan. The Client warrants that any design or drawing provided by it does not infringe any intellectual property rights of any other person.

### 13. Disclaimer

13.1. Fulton Hogan undertakes to exercise all reasonable care in minimising damage to the Client's property. Allowance has not been made for the following conditions, unless otherwise specified in a quotation:

- (a) the existence of underground services or obstructions not notified prior to quotation, including but not limited to water pipes, power of telephone lines, sewer or stormwater pipes and reinforcing steel;
- (b) repair or reinstatement of any underground services;
- (c) excavation of unsuitable foundation material, including but not limited to rock, puggy or loose soil, and subsequent backfill necessary to reinstate surface;
- (d) reinstatement of ground surfaces adjacent to the site to the correct level including adjoining lawns, footpaths, driveways, kerbs, channels and the like;
- (e) standing time at the request of the Client; or
- (f) additional work to support construction equipment.

13.2. If during the course of work, any of the conditions in clause 13.1 is encountered, Fulton Hogan will cease work immediately and supply the Client with an estimate of costs to overcome it. The Client is entitled to accept the estimate or terminate the work. In the event of termination, the Client will pay Fulton Hogan all costs incurred for work carried out to the date of termination and for any work required to reinstate the property.

13.3. Fulton Hogan accepts no responsibility for damage to footpath crossings, unless otherwise specified in a quotation.

### 14. Amendment

14.1. Fulton Hogan may amend these Terms from time to time, and the Client shall in respect of the supply of any particular goods or services by Fulton Hogan to the Client be bound by Terms. A copy of the latest version of the Terms will be available on Fulton Hogan's website at [www.fultonhogan.com](http://www.fultonhogan.com).

### 15. General

15.1. Unless expressly provided otherwise in any written agreement between Fulton Hogan and the Client, these Terms and the application for credit account to which these Terms relate constitute the entire agreement between Fulton Hogan and the Client relating to the supply of Goods and/or Services by Fulton Hogan to the Client.

15.2. Each provision of these Terms is severable in whole or in part and if any provision is held to be illegal or unenforceable for any reason, only the illegal or unenforceable provision shall be affected and the remainder of these Terms shall remain in full force and effect.

15.3. These Terms and the application for credit account to which these terms of trade relate shall be construed in accordance with and be governed by the laws of New Zealand and Fulton Hogan and the Client submit to the non-exclusive jurisdiction of the New Zealand Courts.