

The following terms and conditions (**Conditions**) apply to apply to all contracts for the supply of goods, products, materials and related services (**Goods**) by Fulton Hogan to the Purchaser.

## 1 Acceptance of Conditions

- 1.1 All quotations are made and all orders for Goods are accepted by Fulton Hogan on and subject to these Conditions 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 any Purchaser or the imposition of additional or alternative terms and conditions by a Purchaser shall not vary or replace these Conditions or be deemed to do so.
- 1.2 No deductions, retentions, back charges or set-offs are to be made by a Purchaser to a written quotation issued by Fulton Hogan.
- 1.3 Fulton Hogan may withdraw, revoke or vary a written quotation at any time prior to the Purchaser submitting an order which accepts the offer contained in the quotation.
- 1.4 A separate contract (**Contract**) will be formed each time Fulton Hogan accepts an order for or otherwise agrees to supply Goods.
- 1.5 A Contract to supply Goods to the Purchaser commences at the time that Fulton Hogan agrees to supply the Goods to the Purchaser. This may not be the date the order is received by Fulton Hogan.
- 1.6 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.
- 1.7 Fulton Hogan may, in its complete and unfettered discretion, accept or reject, in whole or in part, any order for Goods. 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 (without incurring any liability to the Purchaser).

## 2 Price

- 2.1 The price of Goods specified by Fulton Hogan in a quotation: will, subject to clause 1.5, remain valid for 30 days, unless otherwise specified; and is subject to any other conditions specified in the quotation.
- 2.2 Unless otherwise indicated, prices are exclusive of all taxes and charges (for which the Purchaser will be liable) and do not include the cost of delivery of Goods.

## 3 Payment

- 3.1 Unless Fulton Hogan grants credit to the Purchaser and subject to Fulton Hogan's right to withdraw credit, the Purchaser must pay for the Goods on or immediately prior to delivery.
- 3.2 Where the Purchaser has a credit facility with Fulton Hogan, the Purchaser shall ensure that payment is made in accordance with the terms of the credit facility and in all cases not later than 20 days from the end of the month of the date of invoice or such other date as agreed in writing.
- 3.3 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.
- 3.4 Fulton Hogan may set off any amount owed by the Purchaser or its Related Corporations against any amount of money owed, or may become owing to the Purchaser by Fulton Hogan or its Related Corporations and the Purchaser waives any equivalent right to set off.
- 3.5 Payments made by credit card may be subject to a surcharge.

## 4 Default

- 4.1 If the Purchaser is in default in the performance of any of its obligations under these Conditions, commences to be wound up or is placed under official management or into liquidation or has a receiver and/or manager appointed in respect of any of its assets or becomes insolvent, commits any act of bankruptcy or becomes subject to any other analogous event, Fulton Hogan may in its complete and unfettered discretion exercise any or all of the following rights in addition to any other rights it may have under these Conditions or at law:
  - 4.1.1 suspend deliveries of Goods to the Purchaser;
  - 4.1.2 terminate a contract in relation to Goods that have not been delivered;
  - 4.1.3 withdraw any credit facilities which may have been extended to the Purchaser and require immediate payment of all moneys owed to Fulton Hogan by the Purchaser; and
  - 4.1.4 issue an invoice for, and demand immediate payment of, Goods ordered by the Purchaser but not delivered.
- 4.2 The Purchaser as beneficial owner charges in favour of Fulton Hogan all of its interest in all of the present and future real property of the Purchaser as security for the due and punctual payment of all debts and monetary

liabilities owed by the Purchaser to Fulton Hogan pursuant to a Contract. The Purchaser consents to Fulton Hogan lodging a caveat to note its interest. Upon demand by Fulton Hogan, the Purchaser agrees to immediately execute a mortgage on terms satisfactory to Fulton Hogan to more particularly describe the security interest conferred by this clause.

- 4.3 Should the Purchaser fail within a reasonable time of such demand to execute such mortgage then the Purchaser irrevocably appoints Fulton Hogan as its attorney with authority to do on its behalf anything that it may lawfully authorise an attorney to do including, without limitation, to make, sign, execute, seal and deliver any document and to take possession of, use, sell or otherwise dispose of any real property of the Purchaser.
- 4.4 All costs incurred by Fulton Hogan relating to any action taken by Fulton Hogan to recover monies due from the Purchaser (including, without limitation, legal or other debt collection costs) shall be payable by the Purchaser on an indemnity basis and immediately on demand.

## 5 Specifications

- 5.1 All descriptions, specifications and similar contained in catalogues, price lists or other advertising matter of Fulton Hogan or elsewhere are approximations only. They are intended by Fulton Hogan to be a general description for information and identification purposes and do not create a sale by description.
- 5.2 Fulton Hogan shall not be bound to accept any changes to order after they have been placed.
- 5.3 Unless otherwise stated on a quotation, Goods will be supplied by Fulton Hogan within the tolerances in regard to quantity, weight, dimension and composition as specified in the relevant order or, if not specified, as consistent with usual industry practice. Where the total weight or volume of any Good includes a fraction of a unit of measurement, the Purchaser must pay for that fraction on a pro rata basis.
- 5.4 Where Fulton Hogan is required to order special material or qualities for which a supplier of Fulton Hogan requires minimum order quantities, the Purchaser must accept an increase of the minimum quantity required and pay for such increase. The price for the additional product shall be determined according to the unit price for the Goods included in the order.
- 5.5 The Purchaser agrees that it does not rely on the skill or judgement of Fulton Hogan in relation to the suitability of any of the Goods for a particular purpose unless it has indicated that purpose in writing to Fulton Hogan and Fulton Hogan has acknowledged in writing that the Goods will be fit for the particular purpose.

## 6 Delivery and Risk

- 6.1 Dates and times quoted for delivery are estimates only.
- 6.2 The Goods are at the Purchaser's risk from the time at which they are delivered to the Purchaser or its nominee.
- 6.3 If the Purchaser elects to collect Goods from Fulton Hogan's premises, Goods will be deemed to be delivered and risk in the Goods passes to the Purchaser at the point at which they are made available for loading onto the Purchaser's vehicle. Where the Purchaser attends Fulton Hogan's premises to acquire the Goods, Fulton Hogan may, in its absolute discretion: (a) deliver the Goods into or onto the Purchaser's vehicle in which case risk in the Goods passes to the Purchaser and delivery is effected when the Goods are set down in or on the Purchaser's vehicle; or (b) deliver the Goods by setting them down alongside the Purchaser's vehicle in which case risk in the Goods passes to the Purchaser and delivery is effected when the Goods are set down alongside the Purchaser's vehicle notwithstanding that Fulton Hogan's staff may, on request, assist the Purchaser to load the Goods into or onto the Purchaser's vehicle. Goods ordered for collection will be held for a maximum period of 10 Business Days after the collection date. If the Goods are not collected by that time, they may be delivered to the Purchaser's site and all costs incurred by Fulton Hogan in relation to the holding and delivery of the Goods shall be charged to and be paid by the Purchaser.
- 6.4 If Fulton Hogan agrees to deliver the Goods to a location nominated by the Purchaser:
  - 6.4.1 Fulton Hogan may arrange transport by any means;
  - 6.4.2 delivery will be made during Working Hours to the location agreed by the parties (**Delivery Point**);
  - 6.4.3 Fulton Hogan or its transport contractor will deliver the Goods so close to the Delivery Point as, in the opinion of Fulton Hogan or its transport contractor, it is safe or prudent to do so (**Drop Spot**);
  - 6.4.4 Goods will be deemed to be delivered and risk in the Goods passes to the Purchaser when Fulton Hogan's or its transport contractor's delivery vehicle arrives at the Drop Spot;
  - 6.4.5 Fulton Hogan reserves the right to charge the Purchaser any costs which Fulton Hogan incurs (including demurrage, storage charges and return delivery fees) as a result of: (a) any change to the agreed delivery times by the Purchaser; (b) by the Purchaser in unloading the Goods; or (c) where unloading of the Goods cannot be effected; the unloading of Goods at a Drop Spot is the Purchaser's responsibility at its own cost and risk but Fulton Hogan or its transport contractor may, without liability to the Purchaser, unload the Goods at the Drop Spot if the Purchaser so requests or if there is no representative of the Purchaser present at the Drop Spot at the time the Goods arrive, and

the Purchaser releases, forever discharges and will hold harmless Fulton Hogan and its transport contractor from and against any claim, cause of action or liability arising out of the unloading of Goods at the Drop Spot;

6.5 Fulton Hogan shall not be obliged to complete any order in one delivery and expressly reserves the right to deliver by instalments. Where Fulton Hogan delivers by instalments each instalment shall be deemed to be sold to the Purchaser under a separate Contract. Failure to deliver any one instalment by the time quoted for delivery of that instalment (if any) shall not entitle the Purchaser to repudiate any Contract.

6.6 Where Fulton Hogan or its transport contractor enters the Purchaser's premises or the premises of a third party nominated by the Purchaser as the Delivery Point, the Purchaser:

6.6.1 releases Fulton Hogan from any claim the Purchaser may at any time have had against Fulton Hogan but for this release in respect of damage occasioned to the Purchaser's premises or injury to persons arising out of the delivery by Fulton Hogan or its transport contractor of Goods to such premises; and

6.6.2 indemnifies and holds Fulton Hogan harmless from and against any loss, damage or liability suffered or incurred by Fulton Hogan in respect of damage occasioned to the third party's premises or injury to persons arising out of the delivery by Fulton Hogan or its transport contractor of Goods to the premises of the third party except for and to the extent that such loss, damage or liability suffered or incurred by Fulton Hogan arises out of the negligence or wilful misconduct of Fulton Hogan or its transport contractor.

6.7 No defect or claim in respect of Goods delivered shall entitle the Purchaser to reject delivery of other Goods, which are not subject to any defect or claim, delivered as part of an order.

6.8 If Fulton Hogan is prevented either directly or indirectly from performing any of its obligations under these Conditions, including without limitation, making a delivery of the Goods or any part of the Goods by reason of Force Majeure, it shall be entitled, at its option, by notice to the Purchaser, either to:

6.8.1 extend the time for delivery of the Goods for a reasonable period; or

6.8.2 subject to refunding the Purchaser for any payment already made to Fulton Hogan in respect of those particular Goods (if any), terminate a Contract, and the Purchaser shall not have any claim against Fulton Hogan for damages or any other remedy.

## 7 **Retention of title**

7.1 Legal and equitable title to the Goods is retained by Fulton Hogan until Fulton Hogan receives payment in full from the Purchaser for the Goods and all other monies owing by the Purchaser to Fulton Hogan at any time. Prior to title in the Goods passing to the Purchaser, the Purchaser:

7.1.1 must hold the Goods as bailee and fiduciary agent of Fulton Hogan;

7.1.2 where the Purchaser processes the Goods, either by using the Goods to manufacture other goods or by incorporating the Goods in or with any other goods, must hold the new goods (**Processed Goods**) on trust for Fulton Hogan as bailee and fiduciary agent of Fulton Hogan;

7.1.3 must store the Goods and Processed Goods separate from its own goods and those of any other third party so that they are readily identifiable as the property of Fulton Hogan;

7.1.4 must keep the Goods and Processed Goods in good and merchantable condition and fully insure the Goods and Processed Goods against loss or damage however caused;

7.1.5 must not sell the Goods or Processed Goods except with the prior written consent of Fulton Hogan unless the sale is in the ordinary course of the Purchaser's business, at arms' length and on market terms;

7.1.6 must hold any proceeds of re-sale, insofar as they relate to the Goods and Processed Goods on trust for Fulton Hogan in a separate account; and

7.1.7 must not create any encumbrance over the Goods or Processed Goods which is inconsistent with Fulton Hogan's title to and ownership of the Goods and Processed Goods.

7.2 If the Purchaser is in breach of these Conditions including, without limitation, failure by the Purchaser to make payment for the Goods by the date specified by Fulton Hogan to the Purchaser or in Fulton Hogan's reasonable opinion the payment of any amount in respect of the Goods supplied by Fulton Hogan is in jeopardy, the Purchaser must return the Goods to Fulton Hogan immediately on demand. If the Purchaser does not return the Goods to Fulton Hogan on demand, the Purchaser irrevocably authorises representatives of Fulton Hogan to enter upon any site where the Goods are located to take possession of the Goods without prior notice, and the Purchaser indemnifies Fulton Hogan for all fees (including legal fees on a full indemnity basis), costs, expenses and liabilities (including liabilities associated with Fulton Hogan's retaking possession of the Goods) incurred or suffered as a result of any and all prosecution, actions, demands, claims or proceedings brought by or against Fulton Hogan in connection with the retaking possession of the Goods or the exercise by Fulton Hogan of its rights under this clause, and the Purchaser shall repay all such fees, costs, losses, damages, expenses or any other sums of money on demand.

## 8 Application of the PPSA

8.1 In this clause, PPSA means the Personal Property Securities Act 1999. If a term used in this clause has a particular meaning in the PPSA, it has the same meaning in this clause.

8.2 This clause applies to the extent that Fulton Hogan's interest in any Goods is a security interest.

8.3 The Goods are quarry products, asphalt and related building and engineering products.

8.4 The Purchaser acknowledges and agrees that Fulton Hogan may apply to register a security interest in the Goods at any time before or after delivery of the Goods. The Purchaser waives its right under s 157 of the PPSA to receive notice of any verification of the registration.

8.5 Fulton Hogan can apply amounts it receives from the Purchaser towards amounts owing to it in such order as Fulton Hogan chooses.

8.6 If the Purchaser defaults in the performance of any obligation owed to Fulton Hogan under these Conditions or any other agreement for Fulton Hogan to supply Goods to the Purchaser, Fulton Hogan may enforce its security interest in any Goods by exercising all or any of its rights under these Conditions or the PPSA. To the maximum extent permitted by law, the Purchaser and Fulton Hogan agree that the following provisions of the PPSA do not apply to the enforcement by Fulton Hogan of its security interest in the Goods: sections 114(1)(a), 116, 120(2), 121, 125, 129, 131, 133 and 134.

8.7 The Purchaser and Fulton Hogan agree not to disclose information of the kind mentioned in s 177(1) of the PPSA.

8.8 The Purchaser must promptly do anything required by Fulton Hogan to ensure that Fulton Hogan's security interest is a perfected security interest and has priority over all other security interests in the Goods.

8.9 Nothing in this clause is limited by any other provision of these Conditions or any other agreement between the parties.

## 9 Defects, Faults, Damage, Inaccuracies and Non-conformances

9.1 The Purchaser shall check all Goods received immediately upon unloading and shall notify Fulton Hogan in writing of any inaccuracies or short supply of Goods or any fault, damage or defect in Goods or failure of Goods to comply with the terms of a Contract within 2 Business Days of the date of delivery of the Goods.

9.2 If the Purchaser does not notify Fulton Hogan in writing within 2 Business Days of the date of delivery, Fulton Hogan will not be responsible for any loss or damage whatsoever and howsoever caused arising out of or resulting from such inaccuracies or short supply of Goods, or fault, damage or defect in Goods or failure of Goods to comply with the terms of a Contract.

9.3 If the Purchaser notifies Fulton Hogan in writing of a fault, damage or defect in Goods or failure of Goods to comply with the terms of a contract made pursuant to these Conditions within 2 Business Days of delivery then Fulton Hogan will, if the Purchaser has not used the Goods, at Fulton Hogan's option, repair or replace the Goods that appear to be faulty, damaged or defective or not in compliance with the terms of a Contract and Fulton Hogan shall have no additional liability to the Purchaser.

## 10 Warranties, Liabilities and Indemnities

10.1 Fulton Hogan shall not be responsible for the consequence of any representation made or technical advice given by its employees, agents or sub-contractors in connection with the Goods, and the Purchaser agrees that all such advice is accepted by the Purchaser entirely at the Purchaser's risk.

10.2 Fulton Hogan's liability to the Purchaser (whether arising under statute, contract, tort (including negligence), equity or otherwise) arising out of or in any way connected with the Goods or a Contract, or the supply of the Goods, is limited, at Fulton Hogan's option, to:

- 10.2.1 in the case of Goods, the repair of the Goods, the replacement of the Goods or paying for the cost of repair or replacement of the Goods; or
- 10.2.2 in the case of services, the resupply of services or paying for the cost of resupplying the services;

10.3 Fulton Hogan is not liable to the Purchaser or anyone else arising out or in any way connected with the Goods or a Contract, including without limitation for:

- 10.3.1 any losses, costs, damages, expenses, claims, demands, actions, suits or proceedings (including without limitation for damage to the Goods or injury to any person) arising from the loading, unloading or delivery of the Goods; a failure to deliver, or delay in delivering, the Goods; the removal of defective Goods or the installation of replacement Goods; or the use of any tool or equipment loaned or hired out by Fulton Hogan;
- 10.3.2 any direct, indirect or consequential loss or damage, any loss of actual or anticipated savings, opportunity, revenue, profit or goodwill, or other economic loss; and
- 10.3.3 any claim, action or proceeding by a third party against the Purchaser (or any loss, damages or liability incurred or suffered by the Purchaser as a result of any such claim, action or proceeding).

10.4 The Purchaser indemnifies Fulton Hogan from and will hold Fulton Hogan harmless against all losses, damages, costs and expenses suffered or incurred by Fulton Hogan, and all claims, demands, suits, actions or proceedings made or brought against Fulton Hogan, arising out of the sale of Goods or in relation to the use of Goods by the Purchaser or any third party.

## 11 **Miscellaneous**

11.1 These Conditions set out the entire agreement between the parties in relation to their subject matter. Fulton Hogan may modify these Conditions at any time. The version of these Conditions published on Fulton Hogan's website at the date of a Contract will apply to that Contract.

11.2 A party waives a right under these Conditions only if it does so in writing. A party does not waive a right simply because it fails to exercise the right, delays exercising the right or only exercises part of the right. A waiver of one breach of a term of these Conditions does not operate as a waiver of another breach of the same term or any other term.

11.3 If a provision in these Conditions is wholly or partly invalid or unenforceable, that provision or the part of it that is invalid or unenforceable must, to that extent, be treated as deleted from these Conditions. This does not affect the validity or enforceability of the remaining provisions.

11.4 Fulton Hogan may assign or otherwise deal with the benefit of any Contract without the consent of the Purchaser.

11.5 The Purchaser consents to Fulton Hogan collecting and disclosing personal information in accordance with Fulton Hogan's Privacy Statement and Policy, which are available at: [http://www.fultonhogan.com/Privacy-Statement---Australia-and-New-Zealand/Privacy\\_Statement\\_Australia/](http://www.fultonhogan.com/Privacy-Statement---Australia-and-New-Zealand/Privacy_Statement_Australia/)

## 12 **Interpretation**

In these Conditions:

12.1 Business Day means Monday to Friday (inclusive) excluding public holidays at the place of delivery.

12.2 Fulton Hogan means the Fulton Hogan entity supplying the Goods: Fulton Hogan Limited (New Zealand Company Number 144659).

12.3 Force Majeure includes an act of God, war, fire, strike, lockout, trade or industrial disputes, government interference, lack of production capacity or raw materials, transport delays, accidents, breakdown of plant or machinery, non-delivery or shortage of supplies or any other cause beyond Fulton Hogan's control.

12.4 GST means the tax payable on Taxable Supplies within the meaning of the GST Act;

12.5 GST Act means the Goods and Services Tax Act 1985 and any related legislation imposing such tax or legislation that is enacted to validate, recapture or recoup such tax;

12.6 Purchaser means a person, being an incorporated or unincorporated business or an individual, who acquires Goods from Fulton Hogan;

12.7 Related Corporation has the meaning given to the term "related company" in section 2 of the Companies Act 1993;

12.8 Working Hours means between 7.00am and 5.00pm, Monday to Friday (inclusive) excluding public holidays at the place of delivery.