

The following terms and conditions (Conditions) form part of the purchase order (Purchase Order) given by the Fulton Hogan entity specified in the Purchase Order to the supplier to whom the Purchase Order is addressed (Supplier) to deliver the items specified in the Purchase Order, being the goods (Goods) and / or services (Services), to the site indicated in the Purchase Order (Site) for the price specified in the Purchase Order (Price).

1 ACCEPTANCE OF CONDITIONS

- 11 The Supplier is taken to have accepted the Purchase Order if it notifies Fulton Hogan that it accepts the Purchase Order, a reasonable period of time passes from the Supplier's receipt of the Purchase Order without rejection, or the Supplier delivers the Goods or Services.
- 12 By accepting the Purchase Order, the Supplier acknowledges and agrees to be bound by these Conditions and any other specific terms and conditions referred to in the Purchase Order.
- 13 Subject to clause 14, these Conditions and the Purchase Order apply to the exclusion of all prior discussions, representations, understandings and arrangements and all other conditions and other representations (contractual or otherwise), whether or not endorsed or delivered with or referred to in any order or other documents delivered by the Supplier to Fulton Hogan.
- 14 If the Supplier and Fulton Hogan are parties to an existing contract with respect to the Goods or Services and the terms of that contract were issued by Fulton Hogan, then to the extent of any inconsistency between that contract and the Purchase Order or these Conditions, the terms of that contract prevail.
- 15 In the event of any inconsistency between these Conditions and any specific conditions stated on the Purchase Order, the terms and conditions of the Purchase Order prevail.

2 PRICE & PAYMENT TERMS

- 21 Fulton Hogan purchases the Goods or Services for the Price. Unless expressly stated by Fulton Hogan to the contrary, the Price is inclusive of all costs associated with the supply and delivery of the Goods or Services howsoever arising including taxes, duties and GST, and is not subject to any rise and fall, foreign exchange adjustment or any other adjustment.
- 22 Subject to any applicable law to the contrary, Fulton Hogan's payment terms are 45 days from the end of the month in which an invoice issued by the Supplier to Fulton Hogan is dated following delivery of the Goods or Services to the Site and acceptance of the Goods or Services by Fulton Hogan in accordance with clause 3 of these Conditions.
- 23 Payment by Fulton Hogan of the Price does not affect Fulton Hogan's right to dispute any invoice issued by the Supplier to Fulton Hogan or to make any claim in respect of the Goods or Services supplied.
- 24 Fulton Hogan may deduct from the Price any monies owed to Fulton Hogan by the Supplier.
- 25 Despite any other provision of these Conditions, Fulton Hogan is not liable to the Supplier for any indirect, special or consequential loss or damage which includes loss of profit, loss of revenue, loss of use, loss of business, loss of opportunity, loss of goodwill, loss of production or business interruption.
- 26 Any amount paid or payable by Fulton Hogan to the Supplier in addition to the Price as reimbursement for, or calculated by reference to, any expenses or costs incurred by the Supplier that have been agreed in advance by Fulton Hogan, shall be calculated net of any Input Tax Credits which the Supplier is entitled to in respect of the agreed expenses or costs.
- 27 For the purposes of these Conditions, "GST" and "Input Tax Credit" have the meanings given in A New Tax System (Goods and Services Tax) Act 1999 (Cth).

3 INSPECTION, TESTING & ACCEPTANCE

- 31 Fulton Hogan has the right to inspect, examine and test all or part of the Goods or Services at any stage of engineering, manufacturing, installation or supply. Such inspection, examination or testing does not relieve the Supplier of its liability for any of its obligations under these Conditions, nor will it affect Fulton Hogan's right to subsequently reject the Goods or Services.
- 32 At any time during the period 21 days after delivery of the Goods or performance of the Services, Fulton Hogan may carry out any reasonable acceptance tests on the Goods and/or Services (in whole or part). If any of the Goods or Services fail any acceptance test the Supplier must, at its cost, immediately remedy any defect, fault or problem and may be required to assist Fulton Hogan with testing (and re-testing) as and when requested. Fulton Hogan is not obliged to undertake acceptance testing.
- 33 Without prejudice to any other rights or remedies it may have, Fulton Hogan reserves the right to reject the whole or any part of the Goods or Services if the Goods or Services do not conform with the description in the Purchase Order or are not in accordance with any drawings, designs or specifications forming part of the Purchase Order or provided by the Supplier.
- 34 Any rejected Goods may be returned, at the Supplier's cost, and Fulton Hogan shall be immediately repaid or credited the cost of the rejected Goods. Goods rejected but held by Fulton Hogan will be at the Supplier's risk.

4 DELIVERY AND COMPLETION

- 41 Goods or Services must be delivered or supplied to the Site at the time (or times) specified in the Purchase Order.
- 42 The Supplier shall clearly mark all documents accompanying the Goods or Services with the reference, item number, unit of measurement, description, or other information specified in the Purchase Order, as applicable.
- 43 The Supplier must at its own cost, ensure that all Goods are suitably packed to minimise the risk of loss or damage during transportation and, if specified in the Purchase Order, the Goods shall be packed, marked and transported as specified. The Supplier is liable for loss or damage to Goods in transit to the Site.
- 44 If the supply of Goods or Services involves the bringing of any hazardous goods, materials or equipment onto the Site, the Supplier must first provide Fulton Hogan with all material information and comply with Fulton Hogan's instructions in relation to those hazardous goods, materials or equipment.
- 45 If delivery is not made in accordance with the Purchase Order and these Conditions, and either: the Supplier fails to remedy the breach within the time specified in a notice of default issued by Fulton Hogan, or Fulton Hogan (acting reasonably) does not believe the breach is capable of remedy, Fulton Hogan may, by written notice and without prejudice to any other rights it has, cancel the Purchase Order, obtain replacement goods or services, and claim reimbursement from the Supplier for any additional costs incurred due to such failure by the Supplier to deliver (including without limitation penalties paid by Fulton Hogan to third parties) and damages for breach of contract.
- 46 If the Supplier becomes aware of any delay in, or failure to complete, the supply of any Goods or Services under any Purchase Order, the Supplier must immediately notify Fulton Hogan in writing including the reason and extent of the delay. Upon receipt of that notice, Fulton Hogan may at its discretion suspend completion of the Purchaser Order and/or where Fulton Hogan (acting reasonably) does not believe the delay is capable of remedy, terminate the Purchase Order and recover the Price, or any part thereof, paid to the Supplier. For the avoidance of doubt the suspension of completion of the Purchase Order by Fulton Hogan will not detract from Fulton Hogan's rights to terminate the Purchase Order in accordance with these Conditions.
- 47 Fulton Hogan may vary the scope or the extent of the Goods or Services. The Supplier must not vary the scope or extent, nature or character of the Goods or Services in any way unless instructed to do so in writing by Fulton Hogan, and in which case the Supplier must comply with the notice instructing the variation. The price of the

variation shall be agreed wherever possible prior to the execution of the variation. In the absence of agreement, the price for a variation shall be a reasonable price determined by Fulton Hogan. The price for any variation shall be added to or deducted from the Price.

5 TITLE AND RISK

- 51 Subject to clause 5.2, title to the Goods shall pass from the Supplier to Fulton Hogan on the earlier of payment of the Price or delivery in accordance with clause 4. Risk in the Goods shall pass to Fulton Hogan upon acceptance of the Goods following the inspection and testing outlined in clause 3 (Inspection, Testing & Acceptance).
- 52 This clause 5.2 only applies to any Goods required under the Purchase Order to be manufactured, assembled or installed by the Supplier at the Site. Title and risk in such Goods passes from the Supplier to Fulton Hogan as soon as the Goods become part of the process of manufacture, assembly or installation of the Goods.

6 WARRANTIES

- 61 The Supplier warrants that Goods supplied will:
- (a) be free from encumbrances and free from any security interest under the *Personal Property Securities Act 2009* (Cth);
 - (b) be of acceptable quality and fit for the express or implied purpose for which they are supplied;
 - (c) be free from defects in design, material and workmanship;
 - (d) comply with all relevant specifications and quality requirements required by the Purchase Order (or subsequently notified by Fulton Hogan as part of a variation under clause 4.7), and all statutory or regulatory requirements;
 - (e) where supplied by reference to a sample, correspond to that sample; and
 - (f) where used by any person, not infringe the intellectual property rights of any third party.
- 62 The Supplier must comply with all applicable law governing the provision of Goods and/or Services.
- 63 The Supplier must comply with all applicable Work Health and Safety laws, health and safety rules and regulations in force on the Site, and reasonable safety-related instructions given by Fulton Hogan in relation to ensuring the safety of the Supplier's employees and any other persons for whom the Supplier is deemed responsible. This includes hazard management, information for employees, training and supervision of employees, and any other legal safety obligation.
- 64 The Supplier warrants that:
- (a) in performing the Services it will exercise that degree of care, skill and diligence that would reasonably be expected of a skilled and experienced operator engaged in Australia in the same type of services under the same or similar circumstances;
 - (b) the Services will be provided in a proper, professional and workmanlike manner; and
 - (c) it will ensure that its employees, agents and subcontractors perform the Services to such standards.
- 65 The warranty period on the Goods or Services shall be specified in the Purchase Order. However, if there is no warranty period specified on the Purchase Order the warranty period will be 12 months from delivery by the Supplier and acceptance by Fulton Hogan of the Goods or Services.
- 66 Fulton Hogan can require the Supplier to repair or replace defective Goods or Services (at its discretion) during the warranty period. If the Goods or Services are required to be repaired or replaced by the Supplier, the warranty period for the repair or replacement is extended until 12 months after the repair or replacement.

7 MATERIALS PROVIDED BY FULTON HOGAN

- 71 Any tools, dies, jigs, gauges, equipment, patterns, drawings, blueprints, designs, specifications, samples, software media and technical data supplied by Fulton Hogan to the Supplier or manufactured or acquired by the Supplier in relation to the Purchase Order (Materials) are the exclusive property of Fulton Hogan, and the Supplier shall:
- (a) insure those Materials to their full replacement value against all usual risks and in accordance with any reasonable direction made by Fulton Hogan (including noting Fulton Hogan's interest) and shall provide proof of such insurance to Fulton Hogan upon demand;
 - (b) maintain and keep those Materials in good order and serviceable condition and in accordance with any reasonable direction made by Fulton Hogan (at the Supplier's own cost);
 - (c) use those Materials solely for the purpose of supplying the Goods or Services to Fulton Hogan in accordance with Fulton Hogan's Purchase Order;
 - (d) replace any Materials which are lost, damaged or rendered unusable (in Fulton Hogan's reasonable opinion) while in the Supplier's possession;
 - (e) during and after the expiry or termination of the Purchase Order, not disclose to any other person, without the prior written consent of Fulton Hogan, which consent can be withheld at Fulton Hogan's discretion, the nature and details of the Materials;
 - (f) not use, sell, reproduce, copy, destroy, modify, disclose to any person, or dispose of those Materials without Fulton Hogan's prior written consent which can be withheld at the discretion of Fulton Hogan; and
 - (g) return the Materials to Fulton Hogan upon demand.

8 DISPUTE RESOLUTION

- 81 The Supplier shall not bring any legal proceedings with respect to any dispute arising under or in connection with the Purchase Order and these Conditions (Dispute), until it has first complied with this clause. The Supplier must promptly give written notice of the Dispute to Fulton Hogan's Regional Manager for review and resolution. If the Dispute is not resolved by Fulton Hogan's Regional Manager within 28 days from the date that the Dispute is so referred by the Supplier, then the Supplier shall be entitled to refer the matter to a mediator accredited by the Australian Disputes Centre (Mediator). The parties must jointly agree on the appointment of a Mediator and once the Mediator has accepted appointment the parties must comply with the Mediator's reasonable instructions. If the Dispute is not resolved by a Mediator within 28 days from the date of the appointment of the Mediator (or such longer time agreed by the Parties acting reasonably), the Supplier may bring any legal proceedings with respect to the Dispute.

- 82 The costs of any mediator appointed pursuant to clause 8.1 must be paid equally by the parties.

9 TERMINATION

- 91 Fulton Hogan may, and without affecting any accrued rights or remedies of either party, terminate the Purchase Order by notice in writing:
- (a) if the Supplier does not carry out (in whole or in part) a material obligation at the time and in the manner required under this Purchase Order and the Supplier fails to remedy the breach within the time specified in a notice of default issued by Fulton Hogan, or Fulton Hogan (acting reasonably) does not believe the breach is capable of remedy; or
 - (b) if the Supplier is insolvent.
- If Fulton Hogan terminates the Purchase Order pursuant to this clause, then Fulton Hogan is entitled to recover from the Supplier any costs, losses, damages and liabilities incurred or suffered by it as a result of, or arising out of, or in any way in connection with, the termination or any preceding breach.

- 9.2 Fulton Hogan may, and without affecting any accrued rights or remedies of either party, terminate the Purchase Order by notice in writing for any reason (in whole or in part) and shall reimburse the Supplier upon request for:
- all reasonable unrecoverable costs necessarily incurred by the Supplier pursuant to the Purchase Order up until the date of termination; and
 - all reasonable unavoidable costs incurred by the Supplier up until the date of termination as a result of the termination provided that the Supplier makes available to Fulton Hogan all or any books, records, facilities, work, material, inventories and other items relating to any claim by the Supplier pursuant to this clause 9.1(b) within 60 days of the date of termination.
- 9.3 If the Purchase Order is terminated in part by Fulton Hogan, then the Supplier must deliver those remaining Goods and Services required to be delivered by the Supplier to Fulton Hogan in accordance with the Purchase Order
- 10 **CONFIDENTIALITY**
- 10.1 The Supplier shall not, and shall ensure that its employees and contractors do not, at any time, disclose to any other person any confidential information disclosed to it by Fulton Hogan for the purposes of the Purchase Order except as expressly authorised by Fulton Hogan or as required by law. Unless the Purchase Order otherwise provides, the obligations in this clause 10 survive the termination of the Purchase Order, including termination for breach by either party and termination by expiry.
- 11 **INTELLECTUAL PROPERTY**
- 11.1 The Supplier must not, at any time, use any Fulton Hogan trade mark, including any branding, without the prior written consent of Fulton Hogan, which consent can be withheld by Fulton Hogan in its absolute discretion.
- 11.2 The operation of this clause 11 survives termination of the Purchase Order, including termination for breach by either party and termination by expiry.
- 12 **INDEMNITY**
- 12.1 The Supplier indemnifies Fulton Hogan, its officers, employees and agents from and against:
- all actions, claims, demands, damages, losses, costs, injury and expenses which may be brought or made against or suffered or incurred by Fulton Hogan in respect of or by reason of or arising out of any negligence, or breach relating to or arising out of the Purchase Order or these Conditions by the Supplier, its officers, employees or agents; and
 - all damages, loss, costs and expenses arising out of the presence of the Supplier's officers, employees or agents including, upon or about the Site and against all liability for their injury or death whilst carrying out their duties for the Supplier and for all loss or damage to their personal effects, except to the extent that the damages, loss, costs, expenses or liability is caused by the negligence, or breach relating to or arising out of the Purchase Order or these Conditions, by Fulton Hogan, its officers, employees and agents
- 13 **SEVERANCE**
- 13.1 Any invalid, illegal or unenforceable provision of these Conditions shall be severed. That severance does not in any way prejudice or affect the validity, legality or enforceability of the remaining provisions which remain in full force and effect to the extent that they are substantially capable of performance in accordance with their terms.
- 14 **WAIVER**
- 14.1 A waiver in whole or in part of any provision of these Conditions or any other provision of a Purchase Order is valid only if in writing and signed by the party giving the waiver. A waiver of any provision is not a continuing waiver unless so expressed and is not a waiver of any other provision.
- 15 **JURISDICTION**
- 15.1 The Purchase Order is deemed to have been made in the State or Territory in which the Fulton Hogan office concerned most closely with the Purchase Order is situated and is governed by and shall be construed in accordance with the law in force for the time being in that State or Territory. In any other event, the laws of the State of Victoria will apply. The parties submit to the exclusive jurisdiction of the Courts of that State or Territory and Courts competent to hear appeals therefrom.
- 16 **SUCCESSOR AND ASSIGNEES**
- 16.1 The Supplier must not assign any of its rights under the Purchase Order and the Conditions unless it first obtains the prior written consent of Fulton Hogan, which consent must not be unreasonably withheld by Fulton Hogan. Fulton Hogan may assign any of its rights under the Purchase Order and the Conditions to any of its related entities (as that term is defined in the *Corporations Act 2001* (Cth)).
- 17 **SITE & SAFETY**
- 17.1 Fulton Hogan may order the Supplier or its employees and contractors from the Site where, in the opinion of Fulton Hogan, a breach of any statutory or contractual safety requirement may occur or has occurred, until the breach is remedied. Any such breach must be remedied by the Supplier within a reasonably practicable time. If the Supplier does not comply with this provision then Fulton Hogan may terminate the Purchase Order.
- 17.2 The Supplier is responsible for the protection of the Site (including the protection of air, water and soil) as a result of its provision of the Goods or Services to the Site and must comply with the environmental protection legislation applicable to the State or Territory in which the Site is located.
- 18 **INSURANCE**
- 18.1 Before delivering the Goods or Services, the Supplier must arrange the following types of insurance and give Fulton Hogan satisfactory evidence that the following insurance has been affected:
- Public liability insurance in respect of personal injury, death or property damage arising out of the Goods or Services;
 - Loss or damage to Goods supplied by the Supplier until the Goods or Services are delivered or completed; and
- 18.2 The terms of the insurance must be approved by Fulton Hogan and the insurance must be for the amount notified by Fulton Hogan to the Supplier. Where appropriate, the insurance policy must have a waiver of subrogation clause, a cross liabilities clause and a settlement of claims on the basis of reinstatement or new replacement value clause.
- 19 **STATE CODES AND GUIDELINES FOR BUILDING AND CONSTRUCTION INDUSTRY**
- 19.1 If the Site is in the jurisdiction of:
- New South Wales, the Supplier must comply with, and meet any obligations imposed by the New South Wales Industrial Relations Guidelines: Building and Construction Procurement;
 - Queensland, the Supplier must comply with, and meet any obligations imposed by, the Queensland Code of Practice for the Building and Construction Industry;
 - Tasmania, the Supplier must comply with, and meet any obligations imposed by, the National Code of Practice for the Construction Industry 1997 Edition (NCPCI), the Tasmanian Annexure to the NCPCI, and AS4129-1994 Code of Tendering; and
 - Western Australia, the Supplier must comply with, and meet any obligations imposed by, the Western Australian Building and Construction Industry Code of Conduct 2016.

- 20 **MODERN SLAVERY**
- 20.1 Modern Slavery has the meaning given to it in section 4 of the Modern Slavery Act 2018 (Cth) and any other relevant law.
- 20.2 The Supplier promises that it and, so far as it is aware (having made all reasonable enquiries), its supply chain, has not been: (a) and is not, engaged in any instances of Modern Slavery; (b) convicted of any offence relating to Modern Slavery; and (c) and is not the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with Modern Slavery.
- 20.3 The Supplier must: (a) take and continue to take reasonable steps to prevent Modern Slavery in its business and supply chain; (b) have, maintain and enforce, adequate policies and procedures (including due diligence procedures) to prevent Modern Slavery being in its business and its supply chains; (c) notify Fulton Hogan as soon as it becomes aware of any actual or suspected Modern Slavery in its business or supply chain, including any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body into an instance of Modern Slavery; (d) maintain and, on request, at its own cost provide to Fulton Hogan, a complete and accurate set of records to track the supply chain of all Goods or Services provided to Fulton Hogan; and (e) audit its supply chain for compliance with all laws relating to Modern Slavery.
- 21 **HEAVY VEHICLE NATIONAL LAW - CHAIN OF RESPONSIBILITY**
- 21.1 Definitions:
- COR Laws means each of the Heavy Vehicle National Law Act 2012 (Qld), the Heavy Vehicle (Adoption of National Law) Act 2013 (NSW), the Heavy Vehicle National Law Application Act 2013 (Vic), the Heavy Vehicle National Law (South Australia) Act 2013 (SA), the Heavy Vehicle National Law (Tasmania) Act 2013 (Tasmania) and the Heavy Vehicle National Law (ACT) Act 2013 (ACT) and all subordinate legislation made under each of them, as well as any other applicable Law relating to fatigue management, speed and mass, dimension and load restraint compliance requirements generally referred to as "Chain of Responsibility" laws or "Heavy Vehicle" laws. COR Systems means policies, procedures, standards, training and systems designed to ensure, so far as is reasonably practicable, compliance in COR Laws.
 - The Supplier:
 - must comply, and ensure that its employees, agents, suppliers and subcontractors comply, with COR Laws;
 - must, and must ensure its employees, agents, suppliers and subcontractors, implement, audit and monitor compliance with, COR Systems to ensure compliance with COR Laws;
 - when accessing, egressing or on the Site, comply with and ensure its employees, agents, suppliers and subcontractors comply with Fulton Hogan's COR Systems;
 - acknowledges that it is a primary duty holder under the COR Laws with responsibility for developing COR Systems;
 - must proactively provide reasonable assistance to Fulton Hogan to enable Fulton Hogan to satisfy its duties and responsibilities under COR Laws;
 - must obtain and maintain, and ensure that each of its employees, agents, suppliers and subcontractors obtains and maintains any licence, permit, consent, approval, certification, authorisation, or other thing required to enable the applicable activity, function or task to be undertaken lawfully;
 - must undertake any audits or monitoring directed by Fulton Hogan to demonstrate compliance with COR Laws; and
 - must proactively co-operate with any audit or monitoring undertaken by Fulton Hogan, the Principal (under any head contract with Fulton Hogan) and their respective employees, agents, suppliers and subcontractors to demonstrate compliance with COR Laws and Fulton Hogan's COR Systems.
- 22 **PPSA**
- 22.1 In this clause, PPSA means the *Personal Property Securities Act 2009* (Cth). If a term used in this clause has a particular meaning in the PPSA, it has the same meaning in this clause.
- 22.2 The Supplier agrees:
- not to create any security interest or lien over any of the Goods;
 - not to sell, lease or dispose of its interest in the Goods (other than in accordance with the Purchase Order);
 - not to give possession of the Goods to another person except where Fulton Hogan expressly authorises it to do so;
 - not to permit any of the Goods to become an accession to or commingled with any asset that is not part of the Goods or Services.
- 22.3 The Supplier 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.
- 22.4 The Supplier 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 and to enable Fulton Hogan to exercise rights in connection with the security interest.
- 22.5 The parties agree that:
- sections 142 and 143 of the PPSA are excluded and Fulton Hogan need not comply with the following provisions of the PPSA: sections 95, 118, 120, 121(4), 125, 130, 132(3)(d), 132(4) and any other provision of the PPSA notified to the Supplier by Fulton Hogan after the date of the Purchase Order; and
 - Fulton Hogan need not give any notice required under any provision of the PPSA (except section 135).
- 22.6 Nothing in this clause is limited by any other provision of the Purchase Order.