

The following Terms apply to all contracts for the supply of Products by Fulton Hogan to the Customer.

1. ACCEPTANCE OF TERMS

- a) All quotations are made and all orders for Products 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.
- b) The parties agree that, to the extent that any purchase order, terms of sale or similar document issued by either the Customer or Fulton Hogan in connection with sale of the Products includes or refers to terms and conditions which differ to these Terms, those terms and conditions will be of no legal effect and will not constitute part of these Terms.
- c) 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.
- d) A separate Contract incorporating these Terms will be formed each time Fulton Hogan accepts an order for, or otherwise agrees to supply, Products to the Customer.
- e) Fulton Hogan may, in its complete and unfettered discretion, accept or reject, in whole or in part, any order for Products.

2. PAYMENT

The Customer must, without set-off, deduction or retention, pay in full for all Products supplied by Fulton Hogan by the 30th day of the month following the date of the invoice (30 days) unless applicable legislation requires payment within a shorter timeframe.

3. INTEREST COSTS

Fulton Hogan may, in its absolute discretion, charge the Customer 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.

4. GST

Each amount payable by the Customer under these Terms in respect of a Taxable Supply by Fulton Hogan is a GST exclusive amount and the Customer must, in addition to that amount and at the same time, pay the GST payable in respect of that supply. "Taxable Supply" and "GST" have the meanings set out in the A New Tax System (Goods and Services) Act 1999.

5. WITHDRAWAL OR VARIATION OF CREDIT

Fulton Hogan may at any time vary or withdraw any future credit granted to the Customer without being liable to the Customer. Credit limits may be imposed by Fulton Hogan in its absolute discretion. Fulton Hogan reserves the right to modify any credit limit at any time without any liability whatsoever to the Customer.

6. DELIVERY AND RISK

- a) Dates and times quoted for delivery are estimates only.
- b) The Products are at the Customer's risk from the time at which they are delivered to the Customer or its nominee (including all risks with unloading) or upon title in the Products passing to the Customer, whichever is the earlier.
- c) If the Customer elects to collect Products from Fulton Hogan's premises, Products will be deemed to be delivered and risk in the Products passes to the Customer at the point at which they are made available for loading onto the Customer's vehicle or to a carrier nominated by the Customer.

7. RETENTION OF TITLE

- a) Title in the Products does not pass to the Customer until the Customer has paid for the Products and all other monies owing to Fulton Hogan in full.
- b) Until payment of all monies owed by the Customer to Fulton Hogan, the Customer holds the Products as fiduciary, bailee and agent for Fulton Hogan and must keep the Products physically separate from all other goods of the Customer, and clearly identified as owned by Fulton Hogan unless Fulton Hogan in its sole discretion instructs otherwise.
- c) If the Customer sells any of the Products while money is owed to Fulton Hogan, the Customer must keep the proceeds of the sale in a separate account and not mix them with any other funds.
- d) If the Customer uses the Products in some manufacturing or construction process of its own or of some third party, then the Customer must hold such part of the proceeds of such manufacturing or construction process as relates to such Products in trust for Fulton Hogan. Such part is deemed to equal in dollar terms the amount owing by the Customer to Fulton Hogan and at the time of payment of such proceeds the Customer's obligation to pay the amount owed for such Products will be discharged.
- e) If the Products are resold, or goods using the Products are manufactured and resold by the Customer, the Customer holds part of the book debts owed in respect of such sales and proceeds of such sales in trust for Fulton Hogan. Such part of the book debts is the amount which equals in dollar terms the amount owed by the Customer to Fulton Hogan at the time of the receipt of such book debts.

8. PPSA

- a) If a term used in this clause has a particular meaning in the PPSA, it has the same meaning in this clause.
- b) This clause applies to the extent that Fulton Hogan's interest in any Products is a security interest.
- c) The Customer acknowledges and agrees that Fulton Hogan may apply to register a security interest in the Products at any time before or after delivery of the Products.
- d) The Customer 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 Products and to enable Fulton Hogan to exercise rights in connection with the security interest.

9. THE PARTIES AGREE THAT:

- (i) 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 Customer by Fulton Hogan after the date of these Terms; and
- (ii) Fulton Hogan need not give any notice required under any provision of the PPSA (except section 135).

f) Nothing in this clause is limited by any other provision of these Terms or any other agreement between the parties.

10. DEFAULT

- a) If an Event of Default occurs, Fulton Hogan may, without prejudice to its other rights under the Terms, the PPSA or any other applicable law:
 - (i) immediately terminate a Contract in relation to Products that have not been delivered;
 - (ii) call up monies owed to it by the Customer;
 - (iii) cease further deliveries of Products to the Customer;
 - (iv) recover from the Customer all loss of profits arising there from; and/or
 - (v) take immediate possession of any Products not paid for, without incurring liability to any third party.
- b) All costs incurred by Fulton Hogan relating to any action taken by Fulton Hogan to recover monies due from the Customer (including, without limitation, legal or other debt collection costs) shall be payable by the Customer on an indemnity basis and immediately on demand.

11. SET-OFF/CONTRA ARRANGEMENTS

If the Customer is also a supplier of goods and/or services to Fulton Hogan, Fulton Hogan may, in its absolute discretion, apply amounts owed by the Customer to Fulton Hogan against amounts owed by Fulton Hogan to the Customer (set-off) and/or receive goods and/or services from the Customer in full or part satisfaction of amounts owed by the Customer to Fulton Hogan (contra arrangements) on the following terms:

- a) Fulton Hogan may commence and/or cancel set-off/contra arrangements at any time and with immediate effect upon written notice to the Customer.
- b) Fulton Hogan will not be liable for any loss or damage whatsoever suffered by the Customer as a result of a decision by Fulton Hogan to commence and/or cancel set-off/contra arrangements.
- c) A decision by Fulton Hogan to commence set-off/contra arrangements with a Customer on any occasion does not amount to a course of conduct or dealing on the part of Fulton Hogan such that the Customer should expect that the set-off/contra arrangements will remain in effect indefinitely.
- d) The existence of any set-off/contra arrangements with the Customer does not amount to a waiver by Fulton Hogan of any of its rights or remedies under these Terms, at law or in equity including, but not limited to, Fulton Hogan's right to demand payment from the Customer of the full amount owing to Fulton Hogan by the Customer at any time and the right to charge interest on any amounts not paid within the credit period.

12. REPRESENTATIONS AND FITNESS FOR PURPOSE

- a) Except as expressly provided for in any contract formed incorporating these Terms, 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 Products to the maximum extent permitted by law, and the Customer agrees that all such advice is accepted by the Customer entirely at the Customer's risk.
- b) The Customer acknowledges and agrees that, unless expressly agreed by Fulton Hogan in writing, it has made its own enquiries in relation to the suitability of the Products and does not rely on any representations by Fulton Hogan in relation to their suitability for a particular purpose or any steps which may need to be taken in relation to their use.

13. LIABILITY

- a) To the maximum extent permitted by law, Fulton Hogan's liability to the Customer (whether arising under statute, contract, tort (including negligence), equity or otherwise) arising out of or in any way connected with the Products or a Contract, or the supply of the Products, is limited to:
 - (i) in the case of Products being defective, the repair of the Products, the replacement of the Products or paying for the cost of repair or replacement of the Products; or
 - (ii) in the case of services forming part of the Products being defective, the resupply of services or paying for the cost of resupplying the services;
 - (iii) for any liability that does not fall within the scope of clauses 12(a)(i) or (ii), Fulton Hogan's liability for any loss or damage arising from or caused in any way by Fulton Hogan in relation to the supply of the Products is excluded.
- b) To the maximum extent permitted by law, Fulton Hogan is not liable to the Customer or anyone else arising out of or in any way connected with the Products or a Contract, including without limitation for:
 - (i) any losses, costs, damages, expenses, claims, demands, actions, suits or proceedings (including without limitation for damage to the Products or injury to any person) arising from the loading, unloading or delivery of the Products; a failure to deliver, or delay in delivering, the Products; the removal of defective Products or the installation of replacement Products; or the use of any tool or equipment loaned or hired out by Fulton Hogan;

- (ii) 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
- (iii) any claim, action or proceeding by a third party against the Customer (or any loss, damages or liability incurred or suffered by the Customer as a result of any such claim, action or proceeding).

c) Notwithstanding the above, nothing in these Terms shall be construed as excluding or limiting the application of any provision of any statute which may not be excluded, limited or modified, and in particular, shall not exclude or limit the applicability of any implied term, warranty or remedy conferred by the ACL which may not be so excluded, limited or modified. To the extent that the Customer is a consumer for the purposes of the ACL, the guarantees under the ACL are given by Fulton Hogan.

13. NOTIFICATION OF CHANGE OF DETAILS

The Customer will notify Fulton Hogan of any change in its structure or management, including any change of director, shareholder, unit holder or any change in partnership or trusteeship within 7 days of the date of change.

14. EXPENSES

The Customer must pay to Fulton Hogan any costs, charges and expenses (including all stamp duty and legal fees calculated on a full indemnity basis) incurred by Fulton Hogan in connection with the failure of the Customer to comply with these Terms.

15. TRUSTS

Where the Customer is a trustee, the Customer shall be liable on the account and in addition the assets of the trust shall be available to meet payment of any monies due and owing to Fulton Hogan.

16. SEVERANCE

If a provision in these Terms 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 Terms. This does not affect the validity or enforceability of the remaining provisions.

17. TIME

Time is of the essence in respect of all the Customer's obligations under these Terms.

18. APPLICATION OF LAWS

The parties submit to the non-exclusive jurisdiction of the courts of the State or Territory in which the Application for Commercial Credit was entered into and the law applying in that State or Territory is the proper law governing these Terms.

19. ASSIGNMENT

Fulton Hogan may by notice to the Customer assign any of its rights under a Contract (in whole or in part) to any third party without the consent of the Customer.

20. PRIVACY

The Customer consents to Fulton Hogan collecting and disclosing personal information in accordance with Fulton Hogan's Privacy Statement and Policy, which are available at: <https://www.fultonhogan.com/privacy-policy/>

21. DEFINITIONS

In these Terms unless the context requires otherwise:

- a) "ACL" means the Australian Consumer Law which is contained in Schedule 2 of the *Competition and Consumer Act 2010* (Cth);
- b) "Contract" means the contract formed when Fulton Hogan accepts an order or otherwise agrees to supply Products to the Customer;
- c) "Customer" means each and every person or corporation to whom Fulton Hogan supplies Products;
- d) "Event of Default" means any of the following events: (i) the Customer is in breach of these Terms and it fails to cure the breach within 7 days of receipt of a notice from Fulton Hogan identifying the breach and requiring the Customer to cure the breach; (ii) if the Customer is a company: an order is made or a resolution is effectively passed for winding up of the Customer; the Customer resolves to appoint a receiver or provisional liquidator or an administrator, or a receiver or provisional liquidator or an administrator is appointed; the Customer goes into liquidation or makes an assignment or an arrangement or composition with its creditors; the Customer stops payment or is deemed unable to pay its debts within the meaning of the *Corporations Act 2001* (Cth); if the Customer is a natural person, an order is made for the Customer's bankruptcy, or the Customer dies or becomes mentally or physically incapable of managing his or her affairs or an order is applied for or made to place the assets and affairs of the Customer under administration; or the Customer ceases or threatens to cease carrying on business;
- e) "Fulton Hogan" means the relevant company in the Fulton Hogan Group that supplies the Products to the Customer;
- f) "Fulton Hogan Group" means Fulton Hogan Australia Pty Ltd (ABN 42 135 849 115) and each of its related bodies corporate (as that term is defined in the *Corporations Act 2001* (Cth));
- g) "PPSA" means the *Personal Property Securities Act 2009* (Cth);
- h) "Products" means all goods supplied, all services rendered and all works carried out by Fulton Hogan to or for the Customer; and
- i) "Terms" means these General Terms and Conditions.