

The following Terms and Conditions (“Conditions”) apply to and form part of all Purchase Orders issued by Fulton Hogan Limited (“Fulton Hogan”) 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 perform the services specified in the Purchase Order (“Services”), to and in respect of the site indicated in the Purchase Order (“Site”), for the price specified in the Purchase Order (“Price”).

ACCEPTANCE OF CONDITIONS

- 1.1 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 and/or performs the Services.
- 1.2 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.
- 1.3 In the event of any inconsistency between these Conditions and any specific terms and conditions stated on the relevant Purchase Order, the terms and conditions of the relevant Purchase Order shall prevail.
- 1.4 In the event that the parties have signed, or do sign, a written agreement for the provision of Goods or Services and the terms of that agreement were issued by Fulton Hogan, the terms and conditions of that agreement will apply and not these Conditions. In addition, where this Purchase Order describes a purchase that is within the scope of an existing written agreement between the Parties, the order of precedence stated in that agreement prevails.
- 1.5 Subject to clause 1.4, these Conditions and the Purchase Order comprise the entire agreement between the parties in relation to the provision of Goods and/or Services and supersede any previous discussions, arrangements, and representations.
- 1.6 Without limiting the foregoing, any terms and conditions asserted or provided by the Supplier in connection with the supply of the Goods and/or performance of Services will not apply and Fulton Hogan will not be bound by any other terms or conditions that the Supplier may purport to apply, whether or not endorsed or delivered with or referred to in any order or other documents delivered by the Supplier to Fulton Hogan.

2 PRICE AND TERMS OF PAYMENT

- 2.1 Fulton Hogan purchases the Goods and/or Services for the Price stated in the Purchase Order. Unless expressly stated by Fulton Hogan to the contrary, the Price will be in New Zealand dollars and is inclusive of all costs associated with the supply and delivery of the Goods and/or the performance of the Services howsoever arising including all delivery and packaging costs, GST and any other taxes, and is not subject to any rise and fall, foreign exchange adjustment or any other adjustment.
- 2.2 Following delivery of the Goods and/or performance of the Services, the Supplier shall provide Fulton Hogan with a valid GST invoice. The Supplier's invoice must:
 - (a) be computer generated;
 - (b) be sent by email to accountspayable@fultonhogan.com;
 - (c) include the Supplier's GST number;
 - (d) include the relevant Purchase Order number;
 - (e) include a description of the Goods supplied and/or Services performed and the date of delivery or performance; and
 - (f) show the total amount payable by Fulton Hogan, with details of how this amount has been calculated.
- 2.3 The Supplier acknowledges that payment may be delayed if Fulton Hogan's invoicing and payment processes are not followed.
- 2.4 Subject to compliance with these Conditions, Fulton Hogan shall pay the Supplier's invoice on the 30th day of the month following the date of invoice.
- 2.5 If any part of an invoice is disputed by Fulton Hogan, Fulton Hogan may withhold payment of the relevant invoice, or part thereof, until the dispute is resolved.
- 2.6 Fulton Hogan may withhold, deduct, or set off any amount owed to Fulton Hogan by the Supplier from any amount due to the Supplier by Fulton Hogan.

3 INSPECTION, TESTING AND ACCEPTANCE

- 3.1 Fulton Hogan has the right to inspect, examine and test all or part of the Goods and/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 or the Purchase Order, nor will it affect Fulton Hogan's right to subsequently reject the Goods or Services.
- 3.2 Fulton Hogan shall be entitled to carry out any reasonable acceptance tests on the Goods or Services (in whole or part) following delivery of the Goods or performance of the Services. If any of the Goods or Services fail any acceptance test, the Supplier must then, 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.
- 3.3 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, are not in accordance with any drawings, designs or specifications or are not in accordance with any other requirements specified in these Conditions or the Purchase Order.
- 3.4 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 that are rejected but being held by Fulton Hogan will be at the Supplier's risk.

4 DELIVERY AND COMPLETION

- 4.1 The Supplier must have a valid Purchase Order number before supplying the Goods and/or Services. Goods or Services supplied against an invalid Purchase Order number may be returned to the Supplier at the Supplier's expense.
- 4.2 The Goods or Services must be delivered to, or performed at, the Site at the time (or multiple times) specified in the Purchase Order.
- 4.3 The Supplier must at its own cost, ensure that all Goods are suitably packed, marked, protected, and transported as specified and against damage and deterioration. The Supplier is liable for loss or damage to the Goods in transit to the Site.

- 4.4 The Supplier shall clearly mark all documents accompanying the Goods or Services with the reference, item number, unit of measurement, description, other information specified in the Purchase Order, as applicable.
- 4.5 If the supply of such Goods or performance of 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.
- 4.6 If delivery of the Goods and/or performance of the Services is not made in accordance with the Purchase Order and these Conditions, 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 other costs incurred due to the failure by the Supplier to deliver the Goods and / or perform the Services (including without limitation, penalties paid by Fulton Hogan to third parties and claim damages for breach of contract).
- 4.7 If the Supplier becomes aware of any delay or failure to complete any Purchase Order, the Supplier must immediately notify Fulton Hogan in writing including the reason and the extent of the delay, and Fulton Hogan may at its discretion suspend the completion of the Purchase Order and/or 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 limit Fulton Hogan's rights to terminate the Purchase Order in accordance with these Conditions.
- 4.8 Fulton Hogan may vary the scope or the extent of the Goods or Services. The Supplier must not vary the scope or the extent, nature, or character of the Goods or Services in any way unless instructed to do so by Fulton Hogan in writing, 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 or 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

- 5.1 Title to the Goods shall pass from the Supplier to Fulton Hogan on the earlier of payment of the Price or completed 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.
- 5.2 The Supplier will not register a security interest in the Goods under the subject of a Purchase Order unless expressly agreed with Fulton Hogan in writing.

6 WARRANTIES

- 6.1 The Supplier warrants that the Goods:
 - (a) shall conform in quantity, quality and description with the specification supplied by Fulton Hogan or as agreed between Fulton Hogan and the Supplier;
 - (b) shall be new and of acceptable quality and fit for the express or implied purpose for which they are supplied;
 - (c) shall be free from any defects in design, material and workmanship;
 - (d) shall comply with all applicable laws and legislation governing such, and with the accepted New Zealand standard, if any, and /or relevant trade standards/regulations, including any appropriate foreign or international trade standards/regulations/laws;
 - (e) will, at the time of delivery, be free of any security interest, lien, or other encumbrance under the Personal Property Securities Act 1999;
 - (f) will be delivered at the time specified on the Purchase Order; and
 - (g) will not cause Fulton Hogan to infringe any intellectual property rights of any third party.
- 6.2 Where the Goods are supplied by reference to a sample, the Goods shall correspond to that sample.
- 6.3 The Supplier must comply with all applicable law governing the provision of Goods and/or Services.
- 6.4 The Supplier warrants that in performing the Services:
 - (a) it will exercise the degree of care, skill and diligence that would reasonably be expected of a skilled and experienced operator engaged in the same type of services under the same or similar circumstances;
 - (b) the Services will conform with all descriptions, requirements, and specifications provided to the Supplier by Fulton Hogan;
 - (c) the Services will be provided in a proper, professional and workmanlike manner; and
 - (d) it will ensure all employees, agents and subcontractors perform the Services to such standards.
- 6.5 The warranty period on the Goods and / or Services shall be specified in the Purchase Order. However, if there is no warranty period specified in the Purchase Order, the warranty period shall be 12 months from delivery of the Goods by the Supplier and acceptance of the Goods and/or Services by Fulton Hogan.
- 6.6 Fulton Hogan may require the Supplier to repair and or replace Goods (at Fulton Hogan's discretion) during the warranty period. If the Goods 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 date of delivery of the repaired or replaced Goods.

7 HEALTH, SAFETY AND ENVIRONMENTAL

- (a) The Supplier, and its employees, contractors and any other persons under their control, must comply with all applicable health and safety and environmental legislation, reasonable safety-related instructions given by Fulton Hogan, and all relevant policies and procedures relating to health and safety, environmental and quality requirements that are applicable to the delivery of the Goods and /or performance of the Services.
- 7.2 The Supplier is responsible for the protection of the Site (including the protection of air, water and land) as that relates to the provision of the Goods to the Site and/or performance of the Services.

7.3 Fulton Hogan may order the Supplier and any of its employees, contractors or any person for whom it is responsible, from the Site where, in the opinion of Fulton Hogan, a breach of any statutory or contractual safety or environmental requirement 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.

8 MATERIALS PROVIDED BY FULTON HOGAN

8.1 Any materials or equipment (including without limitation, 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 supply of Goods or performance of Services (**Materials**) are the exclusive property of Fulton Hogan, and the Supplier shall:

- insure those Materials to their full replacement value against all usual risks and in accordance with any direction made by Fulton Hogan (noting Fulton Hogan's interest) and shall provide evidence of such insurance to Fulton Hogan upon demand;
- maintain and keep those Materials in good order and serviceable condition at its cost and in accordance with any direction made by Fulton Hogan and to the satisfaction of Fulton Hogan;
- use those Materials solely for the purpose of supplying the Goods or performing the Services to Fulton Hogan in accordance with the Purchase Order;
- replace any Materials which are lost, damaged or rendered unusable (in Fulton Hogan's opinion) while in the Supplier's possession;
- during and after the termination of the Purchase Order, not disclose to any other person, without the prior consent of Fulton Hogan (which consent can be withheld at Fulton Hogan's sole discretion), the nature and details of the Materials;
- 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
- return the Materials to Fulton Hogan upon demand.

9 DISPUTE RESOLUTION

- 9.1 If any dispute arises between the parties in relation to these Conditions or the terms of any Purchase Order (**Dispute**) then the parties must first attempt to resolve the Dispute themselves within ten (10) Business Days of the Dispute arising.
- 9.2 If the Dispute is not resolved in accordance with clause 9.1, then either party shall be entitled to refer the Dispute to mediation. 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 parties are unable to agree on a mediator, the mediator (and the mediator's fee) will be determined by the Chair for the time being of the Arbitrators' and Mediators' Institute of New Zealand, Inc. (or the Chair's nominee).
- 9.3 If the Dispute is not resolved within 20 Business Days from the date of the appointment of the mediator (or such longer time agreed by the parties acting reasonably), either party may bring legal proceedings with respect to the Dispute.
- 9.4 The costs of any mediator appointed pursuant to clause 9.2 must be paid equally by the parties.

10 TERMINATION

- 10.1 Fulton Hogan may, and without affecting any accrued rights or remedies of either party, terminate the Purchase Order by notice in writing:
- if the Supplier does not carry out (in whole or part) a material obligation at the time and in the manner required under the 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
 - if the Supplier becomes bankrupt, ceases to carry on business, goes into liquidation, becomes insolvent, appoints a receiver, or enters into a formal proposal for a compromise with its creditors under the Companies Act 1993.
- 10.2 If Fulton Hogan terminates the Purchase Order pursuant to this clause 10.1, 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.
- 10.3 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 within 60 days of the date of termination.
- 10.4 If the Purchase Order is terminated in part by Fulton Hogan, then the Supplier must deliver those remaining Goods or Services required to be delivered by the Supplier to Fulton Hogan in accordance with the Purchase Order.
- 10.5 Subject to Fulton Hogan's rights of deduction or set off, Fulton Hogan shall pay the Supplier for any Goods or Services validly provided up to the date of termination.
- 10.6 No failure or delay on the part of Fulton Hogan to exercise any of its rights in respect of default by the Supplier will prejudice Fulton Hogan's rights of future enforcement.
- 10.7 Termination of any Purchase Order does not affect any responsibilities which are intended to continue after the termination of the Purchase Order.

11 INDEMNITY

- 11.1 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 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 are caused by the negligence, or breach relating to or arising out of the Purchase Order or these Conditions, of Fulton Hogan, its officers, employees and agents.

11.2 This obligation continues after the termination or expiry of the Purchase Order.

12 RELATIONSHIP BETWEEN PARTIES

12.1 Nothing in these Conditions or any Purchase Order makes a party the partner, agent or representative of the other party or creates any joint venture between the parties.

13 CONFIDENTIALITY

13.1 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 13 survive the termination or expiry of the Purchase Order.

14 INTELLECTUAL PROPERTY

14.1 The Supplier must not, at any time, use any Fulton Hogan trademark, including any branding, without the prior written consent of Fulton Hogan, which consent can be withheld by Fulton Hogan in its absolute discretion.

14.2 The operation of this clause 14 survives termination or expiry of the Purchase Order.

15 SEVERANCE

15.1 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.

16 WAIVER

16.1 A waiver in whole or in part of any provision of these Conditions or any other terms 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.

17 GOVERNING LAW

17.1 These Conditions and the Purchase Order shall be governed by and construed in accordance with the laws of New Zealand. The parties submit to the exclusive jurisdiction of the Courts of New Zealand.

18 INSURANCE

18.1 Before delivering the Goods or performing the Services, the Supplier must arrange the following types of insurance and provide Fulton Hogan with satisfactory evidence that such insurance has been effected:

- Public liability insurance;
- Product liability insurance;
- Loss or damage to Goods supplied by the Supplier until the Goods or Services are delivered and completed; and
- Motor vehicle insurance.

18.2 The level of cover under the insurances specified in clause 18.1 shall be for amounts that adequately cover the value of the Goods and/or the Services and any potential damage that may be caused. 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.

18.3 The provisions of this clause 18 shall survive the termination or expiry of the Purchase Order.

19 ASSIGNMENT AND SUBCONTRACTORS

19.1 The Supplier may not assign, subcontract, or otherwise transfer any of its rights, benefits, or obligations under the Purchase Order without the prior written consent of Fulton Hogan. A change in the management or control of the Supplier, or the sale of a major part of the Supplier's business or assets will be deemed to be an assignment for the purposes of this clause. Fulton Hogan may at any time assign, transfer, charge, subcontract, or deal in any other manner with all or any of its rights or obligations under the Purchase Order.

19.2 Where Fulton Hogan consents to the Supplier assigning, subcontracting, or transferring any of its obligations under the Purchase Order to a third party, the Supplier will remain fully responsible for all obligations to Fulton Hogan under the Purchase Order.

20 MODERN SLAVERY

20.1 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

21 NOTICES

21.1 Any notice to be given under these Conditions must be in writing and must be delivered or sent by post or e-mail.

DEFINITIONS

"**Business Day**" means a day on which registered banks are open for business in New Zealand, excluding Saturdays and Sundays.

"**GST**" means goods and services tax prescribed by the provisions of the Goods and Services Tax Act 1985, at the rate prevailing at the relevant time.