

# A G Foley Limited

## Terms and Conditions of Trade

1. **Definitions**
  - 1.1 In these Terms and Conditions:
    - (a) **"Account"** means a monthly charge account to purchase Goods and Services from Foleys with deferred payment;
    - (b) **"Contract"** means any contract or tender document between Foleys and a Contractor for the provision of Goods and Services from Foleys;
    - (c) **"Contractor"** means the contractor specified in a Contract or tender document for the provision of Goods and Services from Foleys;
    - (d) **"Credit Application"** means the Foleys credit application completed by the Customer (where applicable);
    - (e) **"Customer"** means the customer specified in any Quote or Credit Application, a Contractor, any person acting of and with the authority of the Customer or any other person purchasing products and services from Foleys;
    - (f) **"Foleys"** means A G Foley Limited trading as Foleys;
    - (g) **"Goods and Services"** means the products (including any parts or accessories), materials and/or services supplied by Foleys to the Customer as agreed in writing between Foleys and the Customer (and "Goods" and "Services" have corresponding meanings);
    - (h) **"GST"** means goods and services tax payable pursuant to the Goods and Services Tax Act 1985;
    - (i) **"Quote"** means the estimated price for Goods and Services provided to a Customer (other than a Contractor) by Foleys which includes the Goods and/or Services, price, payment terms, Specifications, date and address for Delivery;
    - (j) **"Specifications"** means the Goods and Services specifications agreed between the parties in a Quote;
    - (k) **"Terms and Conditions"** means these Terms and Conditions of Trade together with any special terms agreed in writing between Foleys and the Customer;
- 1.2 Clause headings are for reference purposes only and do not form part of these Terms and Conditions.
2. **Applicability of Conditions**
  - 2.1 These Terms and Conditions shall apply to the supply of all Goods and Services supplied by Foleys to the Customer to the exclusion of any other terms and conditions including without limitation, conditions and warranties written or oral, express or implied even if contained in any of the Customer's documents which purport to provide that the Customer's own terms and conditions shall prevail.
  - 2.2 No variation or qualification of these Terms and Conditions shall be valid unless agreed in writing by Foleys and the Customer.
3. **Application and Account (where applicable)**
  - 3.1 The Customer shall advise Foleys of any changes to the Customer's contact details or to any of the other information provided on the Credit Application.
  - 3.2 Foleys may, at its discretion, restrict the amount of credit provided to the Customer, and may change that limit from time to time without prior notice.
  - 3.3 The Customer agrees that where it has obtained credit in excess of any limit noted on the Credit Application or imposed by Foleys, the Customer will be liable in full for payment of any amount owing in excess of that limit, and Foleys reserves the right to refuse to supply Goods and Services to the Customer.
  - 3.4 On request by Foleys at any time, and in consideration of Foleys providing Goods and Services to the Customer, the Customer will arrange for a personal guarantee to be provided in respect of the Customer's obligations to Foleys by a person or entity satisfactory to Foleys in their sole discretion, on such terms as Foleys considers appropriate.
  - 3.5 Foleys may close or suspend the Customer's Account at any time. On closure of the Customer's Account all of the Customer's rights under these Terms and Conditions shall terminate, except for any rights that have accrued to the Customer prior to the closure of the Customer's Account, and all of the Customer's obligations to Foleys continue under these Terms and Conditions until those obligations have been satisfied to Foleys' satisfaction.
4. **Quoted Work and Orders**
  - 4.1 Quotes are valid for 30 days from the date of quotation unless otherwise stated by Foleys in writing and may be cancelled or amended within that period upon notice to the Customer.
  - 4.2 Quotes are inclusive of travel time and cost (being either a vehicle service charge or a kilometres travelled charge) unless otherwise stated.
  - 4.3 Foleys' Quote is given without commitment and no contract between Foleys and the Customer shall arise unless and until the Customer has accepted in writing Foleys' Quote.
  - 4.4 Foleys may require the Customer to pay a deposit before any Goods or Services are provided.
  - 4.5 Any materials purchased will be charged to the Customer at the end of the month of purchase and payment is due per the payment terms stated below.
  - 4.6 Receipt of any order from the Customer accepting a Quote will be deemed to be acceptance by the Customer of these Terms and Conditions.
5. **Prices**
  - 5.1 All Goods and Services will be charged at rates applicable at the date of billing. The Customer must pay the prices charged.
  - 5.2 Unless otherwise stated all prices are exclusive of GST and other taxes which must be paid by the Customer.
  - 5.3 Labour costs include any time spent travelling to and from Foleys' premises to the Customer, including any time taken to procure any materials and goods required for the job. Labour costs also include administration in relation to the job.
- 5.4 Where a quote is given dependent on information supplied by the Customer, the Customer will be responsible for the accuracy of the information given, and for the supply of all relevant particulars. Any increased cost incurred resulting from any inaccuracy or omission shall be borne by the Customer alone and shall be in addition to the price quoted in either the Quote or Contract as applicable.
6. **Payment**
  - 6.1 Foleys will invoice the Customer for Goods and Services supplied at the time of delivery (unless agreed in writing), or where work extends over a period of more than one month progress claims will be invoiced at the end of each month as per the Construction Contracts Act 2002.
  - 6.2 All invoices are payable by the Customer 20th of the month following the invoice date ("Due Date") to Foleys as directed on the invoice, except where Foleys has agreed otherwise in writing. Time for payment shall be of the essence.
  - 6.3 The Customer may not deduct, offset or withhold any amount from any money owing to Foleys without Foleys' prior written consent and other than prior approved retentions under the Construction Contracts Act 2002.
  - 6.4 Foleys reserves the right to request payment for any Goods and Services prior to commencement of works or Delivery.
  - 6.5 Notwithstanding any other provision herein, if payment is not made by the Customer on the Due Date for payment, then (without prejudice to any of Foleys' other rights and remedies) the Customer will be in default and Foleys may:
    - (a) suspend or terminate supply of Goods and Services;
    - (b) make immediate formal demand for all monies due and payable to Foleys on any account whatsoever which monies shall then immediately fall due and payable;
    - (c) charge the Customer default interest on any amount not paid at the rate of 2.5% per month accrued on a daily basis from the due date until the date of payment in full;
    - (d) pass onto Foleys' appointed agent for the purposes of debt recovery any information Foleys may hold regarding the Customer and their dealings with Foleys. The Customer agrees to pay on demand all collection costs and solicitors fees, charges and/or costs and enforcement costs incurred or expended in recovering monies due and payable by the Customer to Foleys; and
    - (e) exercise any and all remedies afforded to a secured party by Part 9 of the Personal Properties Securities Act 1999 and enter any building or premises owned, occupied or used by the Customer to search for or re-take possession of the Goods and use or dispose of them for Foleys' own benefit at Foleys' sole and absolute discretion.
7. **Delivery**
  - 7.1 Delivery shall occur at the time when the Customer or the Customer's agent signs for the goods at the delivery location and/or the Services are completed in accordance with the Specifications ("Delivery").
  - 7.2 Foleys is under no obligation to enquire as to the authority of any person who signs for the Goods and/or Services on behalf of the Customer.
8. **Ownership and Risk**
  - 8.1 The risk of damage to, or deterioration or loss of Goods shall pass to the Customer on delivery.
  - 8.2 Notwithstanding risk in the Goods passing in accordance with clause 8.1, ownership and title to all Goods remains with Foleys and does not pass to the Customer until payment is made in full of all sums due to Foleys.
  - 8.3 If the Customer wishes to resell any Goods before the Customer becomes the owner, the Customer may only do so if the sale is genuine and made in the ordinary course of the Customer's business.
  - 8.4 While Foleys retains title in the Goods in the Customer's possession and control, the Customer must properly store and secure the Goods and insure the Goods for the full price of the Goods (and hold any proceeds of the insurance on trust for Foleys) until the Goods are sold pursuant to clause 8.3.
  - 8.5 Where Services are being provided on the Customer's property, the Customer shall be responsible for insuring all property at the site.
  - 8.6 Fibre Internet Cables – should Foleys need to dig at any point, we take all care but no responsibility for FIBRE cables that are installed in a concealed manner and/or left unprotected or exposed. Fibre cables are untraceable.
9. **Personal Property Securities Act 1999 ("PPSA")**
  - 9.1 All terms in this clause 9 have the meaning given in the PPSA, and section references shall be references to sections of the PPSA.
  - 9.2 The Customer acknowledges that these Terms and Conditions create a purchase money security interest in favour of Foleys in the Goods and any proceeds from, and existing or future rights in relation to, such Goods as security for all amounts payable by the Customer to Foleys and the performance of the Customer's obligations under these Terms and Conditions.
  - 9.3 The Customer acknowledges that Foleys may at any time register a financing statement on the Personal Property Securities Register ("PPSR") to protect its security interest in the Goods.
  - 9.4 The Customer waives the right to receive from Foleys a copy of any financing statement, financing change statement or verification statement arising in connection with any registration made on the PPSR by Foleys in connection with Foleys' security interest in the Goods.
  - 9.5 Nothing in sections 114(1)(a), 133 and 134 of the PPSA will apply to these Terms and Conditions.
- 9.6 The Customer waives its rights under sections 116, 120(2), 121, 125 and 131 of the PPSA.
10. **Variations**
  - 10.1 Variations to the Goods and Services must be agreed in writing and will be invoiced at the end of the month in which they are carried out and payment is due as per the payment terms above.
11. **Return of Goods**
  - 11.1 Goods supplied in accordance with a Customer's order can only be returned with the express written approval of Foleys.
  - 11.2 Goods specifically imported, procured or manufactured on behalf of a Customer can only be returned on such terms and conditions as Foleys may agree in writing.
12. **Disputes**
  - 12.1 In the event that any part of an invoice is disputed, the amount not in dispute must be paid as per the payment terms above. Thereafter the parties agree to use their best endeavours to promptly resolve any dispute between them.
  - 12.2 The Customer must advise Foleys of any dispute relating to their invoice within 7 days of receiving the invoice.
13. **Default**
  - 13.1 The security interest created by these Terms and Conditions becomes enforceable if any of the following events occur:
    - (a) the Customer fails to pay any money owing on the due date;
    - (b) the Customer sells, parts with possession, leases or disposes of any Goods or does anything inconsistent with Foleys' ownership of the Goods prior to making full payment;
    - (c) Foleys believes the Customer has committed or will commit an act of bankruptcy, has had or is about to have a receiver or liquidator appointed, or is declared insolvent;
    - (d) the Goods are at risk, as that term is defined in the PPSA;
    - (e) any other of the events provided for in the PPSA apply.
  - 13.2 In addition to rights conferred by part 9 of the PPSA, Foleys may take possession of any Goods and may enter any premises, whether or not the occupier is present in order to take possession of Goods pursuant to this clause.
14. **Costs**
  - 14.1 The Customer must pay Foleys' costs (including debt collection and legal costs (as between solicitor and client) on a full indemnity basis) of and incidental to the enforcement or attempted enforcement of Foleys' rights, remedies and powers under these Terms and Conditions.
15. **Warranties**
  - 15.1 Subject to clause 15.5 Foleys shall guarantee the workmanship and materials supplied by it in respect of all Goods and Services undertaken by it for the Customer for a period of two (2) years from the date of the works being completed provided that any maintenance programme recommended by Foleys or by the manufacturer of any equipment is complied with by the Customer. The guarantee shall not extend to drainage work, temporary solutions or temporary repairs, nor cover any consequential losses incurred by the Customer. The guarantee shall cover replacement and/or repair of the works as determined by Foleys in its sole discretion. The Customer shall make every effort to ascertain any defect as soon as possible after Delivery of the Goods and/or Services and shall notify Foleys in writing immediately after discover of any defect of alleged defect.
  - 15.2 Any Goods supplied or work done in remedying such defects shall not extend Foleys' liability under this clause beyond the time stipulated in clause 15.1 above. At the expiration of such time all further liability on Foleys' part shall cease.
  - 15.3 Subject to clause 15.5, Foleys warrants that all Goods supplied to the Customer will comply in all material respects with the Quote or Contract as applicable when delivered to the Customer, unless otherwise agreed in writing.
  - 15.4 The warranties in clause 15.1 and 15.3 do not apply to defects arising out of:
    - (a) material provided by, or out of a design stipulated by the Customer;
    - (b) the Customers' faulty or improper installation, operation or maintenance of the Goods;
    - (c) alterations, modifications or repairs improperly carried out by the Customer or third parties; or
    - (d) normal wear and tear, accidents or misuse.
  - 15.5 In case of materials, parts or components not manufactured by Foleys the Customer shall be entitled to the benefit insofar as it can be transmitted of any warranties given by the original manufacturer in respect thereof and liability in respect of such Goods is limited to making the benefit of the original manufacturer's warranties available as aforesaid.
  - 15.6 Except for the warranties as set out in this clause 15, all other guarantees, warranties and representations of Foleys (express or implied) in relation to the Goods and Services, their supply or the quality or fitness of the Goods and Services for any purpose not expressly stated in writing (including those contained in the Contract and Commercial Law Act 2017) are hereby expressly excluded to the maximum extent permitted by law.
  - 15.7 Nothing in this clause 15 will prejudice Foleys' limitation of liability contained in clause 16.
16. **Limitation of Liability**
  - 16.1 Foleys shall in no way be liable to the Customer whether in contract, tort or otherwise for any indirect loss or consequential damages due to:
    - (a) suspension or termination of supply of Goods and Services due to Customer default;
    - (b) damage caused by misuse of Goods; or
    - (c) any act or omission by Foleys (including negligence).
  - 16.2 Without limiting clause 16.1 Foleys will not be liable to the Customer or any other person, for any claim relating to or arising from failure to deliver Goods or Services by a specified date, for any loss caused by anything which is beyond Foleys' reasonable control, for loss of income, time, or sales, cost of replacement product, cost of labour, claims asserted by the Customer's customers, injury to personal property or injury to any person, whether or not occasioned by Foleys' negligence.
  - 16.3 Foleys' liability to the Customer under any claim (whether in contract tort (including negligence) or by virtue of a breach of any statutory duty or otherwise) will be limited to the price of those Goods and Services to which the claim relates.
  - 16.4 All claims by the Customer in relation to Goods and Services must be made in writing and received by Foleys within fourteen (14) days of Delivery or in the case of a claim under clause 15.1 then within fourteen (14) days of the Customer becoming aware of the defect. In the event of a claim being made, the Customer will allow Foleys or Foleys' agent to inspect the Goods in respect of which the claim is made.
17. **Force Majeure**
  - 17.1 Foleys will not be liable for failure to meet its obligations and shall be exempt from responsibility for loss or damage caused by delay due directly or indirectly to war, acts of God, force majeure, strikes, lock outs, riots, perils of the sea, fire, earthquake, Government action or interference, shipping delays, failure on the Customer's part to put Foleys promptly in possession of the site on which any Delivery is to occur, or to any cause beyond Foleys' control or the control of any persons supplying Foleys with goods, materials or services necessary to fulfil the Customer's order.
18. **Privacy Act 2020**
  - 18.1 Foleys may collect personal information from the customer, including information on the Customer's name, contact information, location, interactions with us and billing for purchase information.
  - 18.2 Foleys collects personal information in order to ensure it can run its business effectively and minimise its financial risk (for example by contacting credit agencies);
  - 18.3 The Customer's personal information is shared with credit agencies or other relevant third parties or agents in order to carry out credit enquiries on the Customer. The Customer authorises disclosure of their personal information to such credit agencies or other relevant third parties or agents, and the Customer also authorises such credit agencies or other relevant third parties or agents to use the Customer's personal information to respond to credit enquiries by Foleys.
  - 18.4 Foleys protects all personal information it holds with reasonable technical and process controls. As part of this, Foleys may store some personal information with third parties in national and/or overseas data centres and the Customer authorises disclosure of their personal information to such third parties.
  - 18.5 The Customer has the right to ask for a copy of any personal information Foleys holds about the Customer, and to ask for it to be corrected if the Customer thinks that information is wrong. If the Customer would like to ask for a copy of its information, or to have it corrected, please contact Foleys at office@foleys.co.nz, or 03 478 8009.
19. **Consumer Guarantees Act 1993 ("CGA")**
  - 19.1 Where the Customer is a consumer under the CGA who acquires Goods and/or Services from Foleys other than for the purpose of business, then these terms and Conditions will be subject to the provisions of the CGA.
  - 19.2 Where Goods and/or Services are supplied for business purposes, the Customer agrees that the provisions of the CGA will not apply.
20. **Miscellaneous**
  - 20.1 These Terms and Conditions may be varied by Foleys, at any time without notice to the Customer. New Terms and Conditions will be enforceable by Foleys from the date they were provided to the Customer.
  - 20.2 The Credit Application, the Quote or Contract (as applicable) and these Terms and Conditions are the entire agreement between Foleys, the Customer and the Guarantor, and supersede all representations, agreements or other communications made by Foleys.
  - 20.3 If any part of these Terms and Conditions is illegal, unenforceable or invalid, that part is to be treated as modified or removed to the extent required to make it effective. The rest of these Terms and Conditions are not affected.
  - 20.4 The Customer may not transfer or assign any of its rights or liabilities under the Terms and Conditions to any other person without the prior written consent of Foleys.
  - 20.5 Nothing in these Terms and Conditions will constitute any party as the partner, agent, employee or officer of any other party and no party will make any contrary representation to any other person.
  - 20.6 No waiver of any breach, or failure to enforce any provision of these Terms and Conditions at any time by any party will in any way limit or waive the right of that party to subsequently require strict compliance with these Terms and Conditions.
  - 20.7 These Terms and Conditions are governed by New Zealand law and the parties submit to the exclusive jurisdiction of the Courts of New Zealand in respect of all matters relating to the Terms and Conditions.