

A G Foley Limited
Terms and Conditions of Trade

1 Definitions

- 1.1 Foleys means A G Foley Ltd trading as Foleys.
1.2 Customer means the Customer, any person acting of and with the authority of the customer or any person purchasing products and serviced from Foleys.
1.3 Any goods and services supplied or completed by Foleys for the Customer will be supplied on these terms and conditions.

2 Ownership

Ownership and title to all goods remains with Foleys and does not pass to the Customer until payment is made in full.

3 Prices

- 3.1 All goods and services will be charged at rates applicable at the date of billing. The Customer must pay the prices charged.
3.2 Unless otherwise stated all prices are exclusive of GST and other taxes which must be paid by the Customer.
3.3 Either a vehicle service charge or a kilometres travelled charge will be added to invoices unless otherwise agreed.
3.4 Labour costs include any time spent travelling to and from the workshop 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.

4 Payment

- 4.1 Foleys will invoice the Customer for all sales or issue a payment claim as per the Construction Contracts Act 2002.
4.2 All accounts are payable 14 days following the invoice date ("due date"), except where Foleys has agreed in writing that other terms shall apply.
4.3 If full payment is not made by the Customer on the due date, then the Customer will be in default.
4.4 The Customer may not deduct, offset or withhold any amount from any money owing to the company other than prior approved retentions as per the Construction Contracts Act 2002.

5 Delivery

Delivery occurs at the time possession of the goods passes to the Customer or a person nominated by the Customer.
The risk in goods passes to the Customer on delivery.

6 Personal Property Securities Act 1999 (PPSA)

- 6.1 All terms in this clause 6 of these Terms of Trade have the meaning given in the PPSA, and section references shall be to sections of the PPSA.
6.2 Clause 2 creates a security interest in all goods supplied by the Company.
6.3 Foleys can register a general security interest over all the Customer's assets up to the value of any debt incurred.
6.4 The Customer consents to Foleys registering on the Personal Property Security Register ("the PPSR") a general security interest over all the Customer's assets, and a security interest over all goods supplied by Foleys.
6.5 The Customer waives the right to receive a copy of the Verification Statement.
6.6 Nothing in sections 114(1)(a), 133 and 134 of the PPSA will apply to these Terms of Trade.
6.7 The Customer waives its rights under sections 116, 117(1)(c), 120(2), 121, 125, 129 and 131.

7 Quoted Work

- 7.1 Quotations are valid for 30 days from the date of quotation unless otherwise stated.
7.2 Quotations are inclusive of travel time and travel cost unless otherwise stated.
7.3 Foleys may require the Customer to pay a deposit before any goods or services are provided.
7.4 Any materials purchased will be charged to the Customer at the end of the month of purchase and payment is due as per the payment terms stated above.
7.5 Progress claims will be invoiced at the end of each month.

8 Variations

Variations 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.

9 Return of Goods

- 9.1 Goods supplied in accordance with a Customer's order can only be returned with the express approval of Foleys.
9.2 Goods specifically imported, procured or manufactured on behalf of a Customer can only be returned on such terms and conditions as Foleys may agree.

10 Disputes

- 10.1 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 endeavors to promptly resolve any dispute between them.
10.2 The Customer must advise Foleys of any dispute relating to their invoice within 7 days of receiving the invoice.

11 Default

The security interest created by clause 2 and clause 6.3 of these Terms of Trade 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's 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.

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.

12 Costs

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.

13 Penalty Interest

- 13.1 Penalty interest at a rate of 2.5% per month, will accrue on any unpaid amount on a daily basis from the due date to the date of payment. Such interest will be payable upon demand.
13.2 The levying of interest shall not extend the due date for payment.

14 Credit Limits

Foleys may restrict the amount of credit provided to the Customer, and may change that limit from time to time without prior notice.

15 Limitation of Liability

- 15.1 Foleys shall guarantee the workmanship and materials supplied by it in respect of all works undertaken by it for the Customer for a period of two (2) years from the date of the works being completed so long as 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 by the Customer. The guarantee shall cover replacement and/or repair of the works as determined by Foleys in its sole discretion.
Foleys shall in no way be liable to the Customer whether in contract, tort or otherwise for any loss or consequential damages due to:
(a) Delay or failure to supply goods.
(b) Suspension or termination of supply of goods. Due to Customer default.
(c) Damage caused by misuse of goods.

Damages for faulty goods will be limited to the purchase price of those goods.

16 Privacy Act

- 16.1 The Customer authorises Foleys to:
(a) Make enquires with relevant third parties and/or credit agencies regarding the Customer's credit history
(b) Release information for the above purpose to the extent necessary, to relevant third parties and/or credit agencies
(c) Instruct an agent to carry out any credit enquires, and the Customer agrees the above authorisations will apply to such agent.
16.2 The Customer authorises any credit agencies and/or relevant third party to disclose any relevant information to Foleys in response to credit enquires. The Customer also acknowledges that any information disclosed to a credit agency will be held on their systems and used to provide their credit reporting service.

17 Consumer Guarantees Act 1993 ("CGA")

Where the Customer is a consumer under the CGA who acquires goods and services from Foleys other than for the purpose of business, then these terms of trade will be subject to the provisions of the CGA. Where goods and / or services are supplied for business purposes, the Customer agrees that the provisions of the CGA will not apply and the Customer will provide a signed credit application to Foleys.

18 Legal Enforcement

These terms and conditions of trade are governed by New Zealand law.

19 Miscellaneous

- 19.1 These Terms of Trade may be varied by Foleys, at any time without notice to the Customer. New terms of trade will be enforceable by Foleys from 30 days after the date they were provided to the Customer.
19.2 These Terms and Conditions of Trade are the entire agreement between Foleys, the Customer and supersede all representations, agreements or other communications made by Foleys.
19.3 If any part of these Terms and Conditions of Trade are 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 of Trade are not affected.