

GRADUS LIMITED - ACCESSORIES STANDARD TERMS AND CONDITIONS OF SALE

- 1. GENERAL**
These conditions for the supply of accessories ("**Goods**") and (as applicable) installation of such Goods ("**Services**") by Gradus Limited (an English company, registered under company number 02152466) ("**Gradus**") govern all orders and contracts with Gradus for the supply of Goods and/or Services ("**Contract**") and override any other terms or conditions stipulated, incorporated or referred to by the person, firm or company that has requested any Goods and/or Services ("**Buyer**"). so that these conditions, except where they are varied by Gradus in writing, are the only conditions upon which Gradus supplies Goods and/or Services.
- 2. CONTRACT FORMATION**
Any quotation issued by Gradus shall not constitute an offer and shall not be binding on Gradus. Each order or acceptance of a quotation for Goods and/or Services by the Buyer shall be deemed to be an offer by the Buyer to purchase Goods and/or Services from Gradus subject to these conditions. No order shall be deemed accepted by Gradus until a written or verbal acknowledgement of order is issued by Gradus or (if earlier) Gradus delivers the Goods or the Services to the Buyer.
- 3. PRICE AND PAYMENT**
3.1 The price payable for Goods shall be (unless otherwise agreed by Gradus) Gradus' list price current at the date of despatch. Where an order is placed by the Buyer for Goods and Services in relation to those Goods, the price payable for the Goods shall be Gradus' list price current at the date of despatch of the Goods unless prices are otherwise expressly agreed by Gradus to be fixed for a period. The price for providing the Services shall be as specified in the acknowledgement of order issued by Gradus or at Gradus' prevailing list price from time to time.
3.2 All prices are exclusive of value added tax which will be charged at the prevailing rate.
3.3 Gradus is entitled to make an additional charge for delivery whether in the UK or outside mainland UK, for repeat deliveries or delivery by instalments.
3.4 The Buyer agrees to pay for any loss or extra cost incurred by Gradus through the Buyer's instructions or lack of instructions or through failure or delay in taking delivery of the Goods (see condition 5.9 below or through any act or default on the part of the Buyer, its servants, agents or employees).
- 4. TERMS OF PAYMENT**
4.1 Unless otherwise agreed by Gradus in writing, payment shall be made to Gradus in the same currency as the invoice, no later than 30 days after the month of invoice, save that payment shall become immediately due upon occurrence of any of the events referred to in condition 13.2 hereof.
4.2 The price of Goods and/or Services shall be due in full and the Buyer shall not be entitled to exercise any set-off, lien or any other similar right or claim.
4.3 If Gradus agrees in writing that the price is payable by instalments or if the Buyer has agreed to take specified quantities of Goods in instalments and:
4.3.1 the Buyer defaults on the payment of any invoice due to be paid; or
4.3.2 the Buyer fails to take delivery of any consignment of Goods due or ready to be delivered, then in such circumstances the whole of the balance of the price shall become due and payable.
4.4 The time of payment shall be of the essence of the Contract. Gradus reserves the right to suspend provision of the Goods and/or Services to the Buyer where any amounts are overdue under this or any other Contract until all such amounts have been paid. Payment shall be due in respect of each invoice in accordance with condition 4.1, notwithstanding that other instalments of the Goods have not yet been delivered or the Services have not been performed or any other default on the part of Gradus may have occurred.
4.5 Order acceptance is subject to necessary credit checks prior to any material procurement for which an account or pro forma payment will then be confirmed.
4.6 Gradus reserves the right to offer or withdraw at any time any preferred payment terms or credit allowed to the Buyer.
4.7 Gradus may at any time appropriate sums received from the Buyer as it thinks fit, notwithstanding any purported appropriation by the Buyer.
4.8 Without prejudice to any other rights it may have, Gradus is entitled to charge interest at 5% above the then current monthly London Inter Bank Offer Rate on overdue payments of the price of the Goods or Services.
- 5. DELIVERY**
5.1 Gradus will deliver or arrange for one of its subcontractors to deliver the Goods to the address specified in the order or to such other address as the parties may agree, subject to any applicable charges due under condition 3.3. Any applicable installation Services will be performed at the address specified in the order or at such other address as the parties may agree.
5.2 Delivery times will vary depending on the nature of the Goods. All times or dates given by Gradus for delivery of the Goods and/or Services are approximate and are given in good faith but without responsibility on Gradus' part. Time of delivery, and/or time of performance of the Services shall not be the essence of the Contract and it is agreed that any failure by Gradus to deliver the Goods and/or perform the Services by the agreed date shall not entitle the Buyer to terminate this Contract.
5.3 Gradus shall not be liable to the Buyer for any losses caused to the Buyer by late delivery of the Goods and/or performance of the Services.
5.4 If the Buyer is unable to accept delivery of the Goods within seven days of Gradus giving notice that the Goods are ready for delivery, Gradus may at its sole discretion without prejudice to its other rights:
5.4.1 charge the Buyer for storing and insuring the Goods for each full day that all or any instalment of the Goods remain in Gradus' possession or in Gradus' subcontractor's possession following the agreed delivery date until the actual date of collection or delivery; and
5.4.2 immediately raise an invoice for the price of the Goods.
5.5 Gradus shall have the right to make delivery of the Goods by instalment of such quantities and at such intervals as it may determine, and express provision as to instalments in the Contract shall be in addition to and not in derogation of this right. Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Buyer to repudiate or cancel any other Contract or instalment.
5.6 **Safety Precautions** - The Buyer shall ensure that suitable protective clothing is worn at work by all persons handling the Goods as protection against sharp edges and shall also ensure that the Goods are suitable for the purpose to which they are put and all necessary equipment is available to off-load heavy or palletised materials.
5.7 **Dies** - Where sections are made to the Buyer's specifications, the Buyer shall reimburse Gradus in respect of all costs of manufacturing and preparing the die for bulk extrusion production. Any die manufactured or prepared by Gradus according to the Buyer's specifications, shall become the property of the Buyer upon receipt of payment in full of all amounts due to Gradus.
5.8 **Compound** - Where compound is ordered by Gradus to the Buyer's specification and forecasted requirements, any shortfall or cancellation of orders will result in any residual compound or packaging being charged to the Buyer.
5.9 **Failed delivery** - If Gradus or its subcontractor attempts to deliver the Goods and it cannot deliver because:
5.9.1 no-one is available to take delivery of the Goods at the location agreed with the Buyer for delivery (the "**Premises**"); or
5.9.2 the delivery vehicle cannot gain safe access to the vicinity of the Premises; or
5.9.3 the Premises or the vicinity is not in a suitable condition to make safe delivery; or
5.9.4 the delivery personnel believe damage to the Goods, the Premises or property may occur and the Buyer has agreed to stop the delivery, then Gradus shall return the Goods to its warehouse while alternative delivery arrangements are made and shall be entitled to charge the Buyer for the aborted visit at its discretion.
5.10 Gradus shall be entitled to charge the Buyer for redelivering the Goods at a rearranged time and date and shall be entitled to impose storage charges in accordance with conditions 5.4.1 above.
5.11 Where the Goods are handled by a carrier for carriage to the Buyer or to a United Kingdom port for export, any such carrier shall be deemed to be Gradus' agent and not the Buyer's agent for the purposes of sections 44, 45 and 46 of the Sale of Goods Act 1979.
5.12 The Buyer agrees that section 32 (2) of the Sale of Goods Act 1979 shall not apply to Goods dispatched by Gradus by carrier and Gradus shall not be required to give the Buyer the notice specified in section 32(3) of that Act.
5.13 Unless otherwise specified in the relevant order, Goods of international export shall be delivered ex works Gradus premises (as defined in the Harter/Visby Rules) and the Buyer shall be deemed to have accepted the International Chamber of Commerce INCOTERMS® (as revised from time to time). The Buyer is not entitled to withhold or delay payment of the price if it fails to obtain any import or export licence or consent and will pay any additional costs or expenses incurred by Gradus as a result of any such failure.
- 6. NON-COMPLIANCE, NON-DELIVERY, LOSS OR DAMAGE DURING TRANSIT.**
6.1 Gradus will not be liable for non-delivery, loss of or damage to the Goods or for any claim that the Goods are not in accordance with the Contract unless claims to that effect are notified in writing by the Buyer to Gradus (and in the case of claims for non-delivery, or damage with a copy to the carrier if Gradus's own vehicles have not been used to deliver the Goods):
6.1.1 within five days of delivery for loss, damage or non-compliance with the Contract; or
6.1.2 within ten days of the date of the invoice for non-delivery.
6.2 In the event of a valid claim for non-delivery, loss, damage or non-compliance with the Contract, Gradus undertakes at its option either to reprocess or replace the Goods at its expense but shall not be under any further or other liability to any person in connection with such non-delivery, loss, damage or non-compliance.
- 6.3 If the Buyer fails to give notice in accordance with condition 6.1 above, the Goods shall be deemed to be in all respects in accordance with the Contract and without prejudice to earlier acceptance by the Buyer, the Goods shall be deemed to have been accepted by the Buyer and the Buyer shall pay for the Goods accordingly.
- 7. QUANTITIES**
7.1 Quantities of all consignments of Goods as ascertained by Gradus and notified to the Buyer in writing shall be conclusive unless an irregularity in the written advice thereof is provided.
7.2 The Buyer shall not be entitled to reject deliveries of the Goods for failure by Gradus to comply with the quantity provisions. Variations in the total quantity delivered shall be subtracted or added to the Contract as the case may be.
- 8. SERVICES**
8.1 The following conditions shall apply to the Services only.
8.2 The Buyer shall make available a designated area for storage, cutting and/or preparation at all times whilst the Services are being performed.
8.3 When installing matting, Gradus shall make an allowance for a maximum 3mm latex screed preparation (ie matwell frame only) unless otherwise agree with the Buyer in writing.
8.4 The price of the Service stated in Gradus' initial quotation is based on the information received from the Buyer and is subject to amendment pending material or locational changes and a survey including measurement prior to acceptance.
8.5 The price of the Service is based on a single continual visit during normal working hours. Costs for additional visits will be charged at a rate to be agreed prior to commencement of the Services.
8.6 Gradus shall be entitled to charge the Buyer for any abortive visit and such costs will be charged at a minimum rate of £450.00 per aborted visit.
8.7 The Buyer should allow a minimum of 4 weeks for delivery from the time the Buyer's site is measured by Gradus for Gradus to procure the relevant materials. The time of performance of the Services shall be confirmed by Gradus with the Buyer.
8.8 Prices remain valid for a period of 6 months from the date of quotation unless otherwise stated.
8.9 Orders will only be avoided or varied which shall for the avoidance of doubt include by email or fax.
8.10 When ordering wall protection, the Buyer must confirm its preferred colour options and fixing heights at the time it places an order with Gradus. The Buyer should note that a timber pattress should be evident prior to installation to aid the fixing of wall protection, and if not available, the Buyer shall notify Gradus in advance of the alternative method of fixing required which will be costed into the installation rates prior to the commencement of any works.
8.11 Gradus shall be entitled to charge the Buyer for any costs incurred by Gradus in the removal and disposal of any existing materials.
- 9. CANCELLATIONS AND RETURNS**
9.1 Save as provided in these conditions, Contracts may not be cancelled except by agreement in writing of both parties and upon the payment to Gradus of such amount as may be necessary to indemnify Gradus against all loss resulting from the said cancellation. Cancellations or alterations cannot be accepted once the Goods are being manufactured to meet the order, or once the Goods have been cut to the agreed specifications.
9.2 Goods supplied cannot be returned without Gradus' prior written consent. Please note that Gradus may not give its consent to the return of Goods manufactured to the Buyer's order and specification if Gradus deems that the Goods are not suitable for resale.
9.3 If Gradus consents to the return of all or any part of the Goods, they shall be returned to such address as Gradus may specify at the Buyer's expense. Gradus will inspect the Goods on their return and if, following inspection:
9.3.1 Gradus is satisfied that the Goods are in good and marketable condition then Gradus may offer to credit the Buyer for the value of the returned Goods at its discretion. For the avoidance of doubt, any such credit offered to the Buyer shall be in respect of the invoice value of the Goods and a minimum handling charge of £30 will be applied to cover administration costs. If the Buyer does not agree to the value of credit offered by Gradus for the returned Goods, the Buyer shall collect the Goods from Gradus or Gradus will arrange for such Goods to be delivered to the Buyer at the Buyer's cost;
9.3.2 the returned Goods are not in good and marketable condition or the parties fail to agree a price for the Goods pursuant to 9.3.1, Gradus shall notify the Buyer and the Buyer shall collect the Goods within 10 days of receiving such notification. If the Goods have not been collected by the Buyer within a 10 day period following notification, Gradus shall be entitled to dispose of the Goods as it sees fit. The proceeds of the sale of any returned Goods shall initially be set off by Gradus against any indebtedness of the Buyer to Gradus and any remaining balance shall be paid to the Buyer.
- 10. RISK AND TITLE**
10.1 Following delivery, the Goods shall be at the Buyer's risk who shall be solely responsible for their custody and maintenance but, unless otherwise expressly agreed in writing, the Goods shall remain Gradus' property until all payments to be made by the Buyer under this Contract and any other contract between Gradus and the Buyer and on any other account whatsoever have been made in full and unconditionally. Whilst Gradus' ownership continues the Buyer shall keep the Goods labelled as belonging to Gradus and separate and identifiable from all other goods in its possession as bailee for Gradus and shall not attach the Goods to real property without Gradus' consent.
10.2 Pending payment of the full purchase price of the Goods pursuant to a Contract the Buyer shall at all times keep the Goods completely insured against loss or damage by fire, theft and other risks usually covered by insurance in the type of business for which the Goods are for the time being used, in an amount at least equal to the balance of the price for the same from time to time remaining outstanding.
10.3 If the Buyer resells or disposes of any Goods in which title has not passed to the Buyer, such resale or disposal shall (as between Gradus and the Buyer) be made by the Buyer as agent for Gradus. The proceeds of any resale or disposal shall be held on trust by the Buyer in a separate identified account for the benefit of Gradus.
10.4 In the event of a failure by the Buyer to pay the price or upon the occurrence of any of the events set out in condition 13.2, Gradus shall have power to re-sell the Goods, such power being additional to (and not in substitution for) any other power of sale arising by operation of law or implication or otherwise and for such purpose Gradus and its servants and agents may forthwith:
10.4.1 enter upon any premises or land occupied or owned by the Buyer to remove the Goods which the Buyer hereby authorises; or
10.4.2 require the Buyer to deliver up all or any part of the Goods to Gradus.
- 11. INFRINGEMENT OF THIRD PARTY RIGHTS**
11.1 Gradus is not liable to the Buyer if the Goods or Services infringe or are alleged to infringe the rights of any third party if such Goods or Services are supplied pursuant to an international supply contract as defined by section 26 of the Unfair Contract Terms Act 1977.
11.2 If at any time it is alleged that the Goods or Services infringe the rights of any third party or if in Gradus' reasonable opinion such an allegation is likely to be made, Gradus may at its option and its own cost:
11.2.1 modify or replace the Goods or re-perform the Services in order to avoid the infringement; or
11.2.2 procure for the Buyer the right to continue using the Goods or benefit from the Services; or
11.2.3 repurchase the Goods at the price paid by the Buyer less depreciation at the rate Gradus applies to its own assets and equipment.
11.3 If any claim is made or action brought or threatened which alleges infringement of the rights of any third party:
11.3.1 the Buyer shall notify Gradus as soon as it becomes aware of any such claim;
11.3.2 Gradus shall have control over and shall conduct any such proceedings in such manner as it shall determine; and
11.3.3 the Buyer shall provide all reasonable assistance as Gradus may request.
11.4 The Buyer shall indemnify Gradus against all loss, liability and cost which Gradus incurs in carrying out any work required to be done on or to the Goods or in relation to the Services in accordance with the Buyer's requirements or specifications which give rise to any infringement or alleged infringement of the rights of any third party.
11.5 If Gradus or its employees or agents design Goods pursuant to a commission from the Buyer (whether to fulfil an order or otherwise) or intellectual property rights created in relation to such Goods shall vest in Gradus and the Buyer shall or procure the doing of all such further acts and execute or procure the execution (as a deed or otherwise) of all such documents as may from time to time be necessary to give full effect to this condition 11.5.
- 12. WARRANTIES AND LIABILITY**
12.1 The Buyer shall have the benefit of the product warranties applicable to the Goods for the specified warranty periods subject to any terms and conditions contained therein. Further details are available from Gradus on request.
12.2 Any warranty given by Gradus is subject to the following conditions and the provisions of conditions 12.8 to 12.13:
12.2.1 Gradus is not liable for a defect in the Goods caused by fair wear and tear, abnormal or unsuitable conditions of storage or use, or an act, neglect or default of the Buyer or a third party;
12.2.2 Gradus is not liable for a defect in the Goods unless it is notified to Gradus in accordance with condition 12.3 as the case may be; and
12.2.3 no complaint can be considered where any fault or damage has been caused by improper installation, improper cleaning or any other such abuse.
12.3 Any claim by the Buyer under the warranty given in condition 12.1 above must be notified to Gradus within one month of discovering the defect, after which Gradus shall have no liability to the Buyer.
- 12.4 In the event of a valid claim made pursuant to condition 12.3, Gradus undertakes at its option either to repair the Goods to new condition, reprocess or replace the Goods at its expense but shall not be under any further or other liability to any person in connection with the defect.
12.5 Except as set out in this condition 12, all conditions, warranties and representations, expressed or implied by statute, contract or otherwise, in relation to the supply, non-supply or delay in supplying the Goods and Services are excluded to the extent permitted by law.
12.6 Nothing herein shall impose any liability upon Gradus in respect of any defect in the Goods or Services arising out of the acts, omissions, negligence or default of the Buyer, its servants or agents, including in particular but without prejudice to the generality of the foregoing any failure by the Buyer to comply with any of Gradus' recommendations as to storage and handling of the Goods.
12.7 Where the Goods or Services are delivered by instalments any defect in any instalment shall not be a ground for cancellation of the remainder of the instalments and the Buyer shall be bound to accept delivery thereof.
12.8 The Contract shall not constitute a sale by description or sample.
12.9 **Buyer's drawings and specifications** - Gradus shall not be liable for imperfect Goods or Services caused by any inaccuracies in any drawing, bills of quantities or specifications supplied by the Buyer.
12.10 Subject to the provisions in condition 12.13 below, Gradus is not liable to the Buyer in contract, tort (including negligence or breach of statutory duty) or otherwise for any of the following losses or damages, whether direct or indirect, arising out of, or in connection with, the supply, non-supply or delay in supplying the Goods or Services or otherwise in connection with this agreement:
12.10.1 loss or damage incurred by the Buyer as a result of third party claims;
12.10.2 loss of actual or anticipated profits;
12.10.3 loss of business opportunity;
12.10.4 loss of anticipated savings;
12.10.5 loss of goodwill;
12.10.6 injury to reputation; or
12.10.7 any indirect, special or consequential loss or damage howsoever caused even if Gradus was advised of the possibility of them in advance.
12.11 **Subject to conditions 12.10 and 12.13, Gradus' entire liability arising out of or in connection with the supply, non-supply or delay in supplying the Goods and Services, or otherwise in connection with this Contract, whether in contract, tort (including negligence or breach of statutory duty) or otherwise, is limited to an aggregate figure of 100% of the value of the price of this Contract.**
12.12 **Subject to conditions 12.10 and 12.13, but notwithstanding condition 12.11, Gradus' entire liability in contract, tort (including negligence or breach of statutory duty) or otherwise for loss or damage to the Buyer's tangible property resulting from Gradus' negligence is limited to an aggregate figure of £50,000.**
12.13 Nothing in this agreement shall operate to exclude or restrict Gradus' liability for:
12.13.1 death or personal injury resulting from negligence;
12.13.2 breach of the obligations arising from section 12 of the Sale of Goods Act 1979 and section 2 of the Supply of Goods and Services Act 1982; or
12.13.3 fraud or deceit.
- 13. DEFAULT OR INSOLVENCY OF BUYER**
13.1 On or at any time after the occurrence of any of the events in condition 13.2, Gradus may:
13.1.1 stop any Goods in transit;
13.1.2 suspend further deliveries to the Buyer;
13.1.3 suspend the Services;
13.1.4 exercise its rights under condition 10; and/or
13.1.5 terminate any Contract forthwith by giving notice to that effect to the Buyer.
13.2 The events are:
13.2.1 the Buyer being in breach of any obligation under any Contract;
13.2.2 a meeting being convened, a petition presented, an order made, an effective resolution passed, or notice given for the Buyer's winding up or dissolution (other than for the sole purpose of amalgamation and reconstruction); or
13.2.3 an application being made, or resolved to be made by any meeting of the Buyer's directors or members, for an administration order in relation to it, or any party gives or files notice of intention to appoint an administrator of it or such an administrator being appointed; or
13.2.4 the encumbrancer taking possession, or a receiver or manager or administrative receiver being appointed, of the whole or any part of the Buyer's assets; or
13.2.5 the Buyer ceasing or suspending payment of any of its debts or being unable to pay its debts as they fall due within the meaning of section 123 of the Insolvency Act 1986;
13.2.6 a proposal being made for a composition in satisfaction of the Buyer's debts or a scheme or arrangement of its affairs including a voluntary arrangement within the meaning of part I of the Insolvency Act 1986; the Buyer entering into an arrangement, compromise or composition in satisfaction of its debts with its creditors;
13.2.8 the making of a bankruptcy order against the Buyer;
13.2.9 the death of the Buyer; or
13.2.10 any analogous event to 13.2.1 to 13.2.9 above occurring in any jurisdiction.
13.3 On termination of a Contract pursuant to condition 13.1, any indebtedness of the Buyer to Gradus shall become immediately due and payable and Gradus is relieved of any further obligation to supply Goods to the Buyer pursuant to the Contract.
- 14. REPRESENTATIONS**
Each of the parties acknowledges and agrees that in entering into this Contract it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) other than as expressly set out in this Contract. The only remedy available to either party in respect of any such statement, representation, warranty or understanding shall be for breach of contract under the terms of this Contract.
- 15. FORCE MAJEURE**
Gradus shall be entitled to delay or cancel delivery or to reduce the amount delivered if it is prevented from, or hindered in, or delayed in manufacturing, obtaining or delivering Goods by normal route or means of delivery through any circumstances beyond its reasonable control including but not limited to strikes or other industrial action, lock-out, accidents, war, acts of God, flood, fire, extreme adverse weather conditions, terrorism, riot, civil commotion, acts of government, breakdown of plant or machinery, or a reduction in or unavailability of normal sources of supply but for the avoidance of doubt, nothings shall excuse the Buyer from its payment obligations under these conditions.
- 16. ASSIGNMENT AND SUB-CONTRACTING**
Gradus may assign or sub-contract the whole or any part of the Contract to any person, firm or company without the consent of the Buyer. The Buyer may not assign or in any way deal with all or part of its rights or benefits under a Contract without Gradus' prior written consent.
- 17. THIRD PARTIES**
A person who is not party to a Contract shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of such Contract. This condition does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
- 18. SEVERANCE**
18.1 If any of these terms or conditions are or become illegal, invalid or unenforceable in any respect, that shall not affect or impair the legality, validity or enforceability of any other provision of these terms and conditions.
18.2 If any illegal, invalid or unenforceable provision would be legal, valid or enforceable if some part of it were deleted, such provision shall apply with the minimum modification(s) necessary to make it legal, valid or enforceable.
- 19. WAIVER**
Any failure or delay by Gradus in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract. Any waiver by Gradus of any breach of, or any default under, any provision of the Contract by the Buyer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 20. GOVERNING LAW AND JURISDICTION**
The Contract and any dispute and /or any non-contractual obligations or disputes arising out of or in connection with it shall be governed by English Law and Gradus and the Buyer agree to submit to the exclusive jurisdiction of the English Courts to settle any such dispute (including (without limitation) in relation to any non-contractual obligations).