

TERMS OF SALE

These Terms

1. These terms apply in any contract of supply of goods or services made between us as supplier and you as Buyer.
2. We may change these terms before we accept your order.
3. These terms prevail over any terms put out by you at any time, unless we provide you with a specific written agreement otherwise.
4. No employee, agent or contractor of ours may vary or add to these terms without the prior written authority of our General Manager

Goods and Services

5. We may alter our range of goods or services on offer without notice.
6. Goods we offer ex-inventory are subject to our prior sale to other buyers.

Quotations

7. Our quotations are valid for a maximum of 30 days from the date of issue (subject to written notice of change or withdrawal at any time), unless specified otherwise in the quotation.

Prices

- Unless our quotation otherwise specifies:
8. Prices quoted are for delivery ex our store
 9. Except with written authorisation of our General Manager, no employee, agent or contractor of ours has power to alter or quote on any basis other than prevailing list prices.
 10. Any prices or other amounts quoted by us do not include goods and tax (GST). If GST is or becomes payable by us for a supply under the contract, you must pay us an amount equal to the 10% GST payable on that supply when payment for the supply is due and payable. Unless we have already provided you with a tax invoice, we will deliver one to you within 14 days of receiving such payment.
 11. We may by notice vary the price after we accept your order:
 - 11.1. if we are unable to proceed without interruption and on a normal 5 day working week;
 - 11.2. if quantities quoted are varied;
 - 11.3. if all specifications do not meet those represented by you; or
 - 11.4. if any relevant representation made by you is incorrect.

Orders

12. All orders are subject to our acceptance
13. We reserve the right to supply an order in full or only in part.
14. You may not cancel an order, nor delay delivery, following acceptance unless we agree in writing and payment of work completed up to that time is made.

Delivery

15. Delivery times and dates are estimates only and are not guaranteed. Where we or our suppliers or sub-contractors are delayed due to unforeseen circumstances or reasons beyond control, we may make part delivery, suspend delivery or extend delivery time for the period of the delay.
16. Delivery is ex our nominated works unless otherwise specified. If you do not specify a method of delivery then we may decide the method but all carriers will be your agents only and delivery will be at your cost.
17. A claim for shortages in delivery must be in writing received by us within 14 days of dispatch from our store.

Title

18. The legal and equitable title of the goods is transferred to you when we receive full payment.
19. Until full payment is received, you keep the goods for us in your capacity as trustee and, if requested, you shall identify the goods accordingly.
20. We may enter your premises to take possession of any goods to which title has not passed and where payment on any account is overdue.
21. Despite the above, you may sell the goods to a third party in the normal course of your business provided that:
 - 21.1 you hold any proceeds of sale on trust for us; and
 - 21.2 where you are not paid by that third party you will at our option assign your claim against that third party to us when requested. You will pay the stamp duty on any such assignment. For the purpose of perfecting any such assignment you irrevocably appoint us as your agent.
22. You hold the book of debt arising from such sale and, upon payment of such debt, the proceeds of sales (but only to the extent of the monies and any outstanding interest owing to us) UPON TRUST for us.

Risk

23. Risk in the goods passes from us to you upon dispatch from our premises, even if we are required to install, set up or perform any service in connection with the goods.

Returns

24. You may return goods only with our prior written consent and at your expense. We will credit returns only where goods are received back to us in good condition. If you return goods to us because of your ordering mistake or for some reason other than the goods being defective, we may charge you a surcharge of 10% of the price.

Liability

25. Our liability for breach of a condition or warranty of supply is limited in our absolute discretion to:
 - 25.1 in the case of goods, and subject to our prior agreement in writing:
 - 25.1.1 the replacement of the goods or the supply of equivalent goods;
 - 25.1.2 the repairs of the goods;
 - 25.1.3 the payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - 25.1.4 the payment of the cost of having the goods repaired.
 - 25.2 in the case of services, and subject to our prior agreement in writing:
 - 25.2.1 the supplying of services again; or
 - 25.2.2 the payment of the cost of having the services supplied again.

Warranty

26. We do not give any other warranty or condition of our supply except to the extent specified (if any) in the contract.

Payment

27. Unless otherwise specified, you must pay us in full within 30 days of the date of invoice, even if the goods may not have been installed or commissioned.
 28. We may grant you additional credit following your completion of documents as we require.
 29. If you do not pay us on time we may:
 - 29.1 require that all future dealings be on the basis of cash payments upon placing an order;
 - 29.2 charge interest on any amounts overdue from more than 7 days at a rate of 10% per annum, accruing from due date;
 - 29.3 without notice to you withdraw or vary any credit facilities we previously provided; and/or
 - 29.4 where delivery is by instalment, we may withhold indefinitely any further instalments until full payment for prior instalments has been made.
- In this term the words **cash payments** exclude cheques which have not been cleared by a bank prior to the delivery of goods.
30. If you do not pay us on time you are not entitled to use any credit facility we extended to you until you make a new application for credit, which application may be refused.
 31. If you do not place an order with for 6 months, the credit facility maybe withdrawn without notice by us and may only be reinstated on the basis of a new credit application form completed by you and accepted by us.
 32. Where due to the size of your order, the time that will elapse between order and delivery and our requirements to pay our suppliers prior to delivery to you we may invoice you for the work in progress or on the basis of set milestones. Such invoices are to be paid in accordance with the payment terms set out in clause 27.

Letters of Credit

33. If payment is to be by letter of credit you must establish an irrevocable letter of credit at a bank acceptable to us. The issuing bank is to be acting for us if so advised.

Copyright

34.
 - 34.1 Subject to clause 34.2, we retain copyright in all of our documents (including plans, illustrations drawings and specifications furnished to you for the purposes of the contract) and neither they nor their contents may be used without our express consent for any purpose other than that for which they were furnished. You may not use, reproduce or communicate the contents of such material to any third party unless authorised by us in writing to do so. This clause survives to termination of the contract.
 - 34.2 If you are receiving from us goods or services involving the manufacture, repair, redesign or update of spare parts, you represent and warrant that you either own the intellectual property relating those parts or have the consent of the owner for us to provide you with those goods or services. You also undertake to hold us harmless and reimburse us for any loss or damage we suffer if the provision of those goods or services results in a claim being made against us by a third party alleging that their intellectual property rights have been infringed.

Specification

35. Where at your request, we manufacture goods to a design, specification, or in compliance with your suggestions as to design, materials, method of construction or otherwise, we are not liable for the practicability or performance of such designs, specifications or recommendations and are not liable for any loss or damage caused by you or any other person as a result of defects or inaccuracies caused by reliance on such design, specifications or recommendations.

Non Competition

36. Where Gradient Services technical staff provide services to you as part of these terms of sale, you agree not to make any offer of employment to these staff for a period of six months following the date of completion.

Force Majeure

37. A party is not liable for any failure to perform this contract if performance is delayed, or prevented by any circumstances not within the direct control of the party and without its fault or negligence, provided that such party promptly gives notice to the party promptly gives notice to the other party and endeavours to remedy the cause thereof with all due diligence.

Our Remedies

38. If you breach any contract with us, or if you are an individual and commit an act of bankruptcy under the Bankruptcy Act, or if you are a company and become an externally administered body corporate under the Corporations Act, we may (in addition to our other rights) suspend or terminate any other contract with you by giving written notice. You remain obligated to pay us for goods or services already delivered under the contract in question.
39. In addition to those rights, if you default or become insolvent we reserve our rights as seller under the Sale of Goods Act of the relevant jurisdiction.

Jurisdiction

40. The laws in force in Victoria govern a contract for supply and you submit to the jurisdiction of the courts of Victoria.

Implied Terms

41. Except as required by mandatory operation of law (or as otherwise expressly provided) all implied conditions are excluded.

Acknowledgement

42. No failure by you to acknowledge these terms of trade, and no supply of goods in such circumstances, implies that these terms have been incorporated into, or have waived in respect of, the contract for supply of the goods.

Assignment

43. You may not assign the contract without our written approval.