

GRADUS CARPETS - STANDARD TERMS AND CONDITIONS OF SUPPLY

1. GENERAL

These conditions for the supply of floor coverings and related articles and items ("Goods") and (as applicable) installation services ("Services") as Gradus Carpets a trading division of Gradus Limited (an English company, no. 02152465) ("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 by the Buyer shall be deemed to be an offer by the Buyer to purchase Goods from Gradus subject to these conditions. No order shall be deemed accepted by Gradus until a written acknowledgement of order is issued by Gradus or (if earlier) Gradus delivers the Goods or the Services to the Buyer.

3. PRICE, PAYMENT AND OVERTAGE

(3.1) The price payable for Goods shall be (unless otherwise agreed by Gradus) Gradus' list price current from time to time as at the date of despatch. Where an order is placed by the Buyer for delivery by instalment the price payable for each instalment shall be Gradus' list price current at the date of despatch for such instalment, 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) The cost of delivering the Goods in a single shipment is included in the price for deliveries in mainland UK. Gradus is entitled to make an additional charge for delivery outside mainland UK, for delivery in the UK otherwise than by Gradus' normal delivery arrangements, for repeat deliveries or delivery by instalments.

(3.4) Orders for a length of carpet (or other floor covering products manufactured in rolls) equal to an exact roll length (or a multiple thereof) will be charged at the full roll price. If an order (or part of the order) is for a length that is less than a standard roll length, then Gradus will charge a cut length price (for those lengths) that are less than a standard roll length to accommodate increased production costs. Please note that standard rolls lengths are typically 2 or 4 metres wide.

(3.5) If the quantity of Goods manufactured to the requirements of a Special Order exceeds the quantity specified, then notwithstanding the provisions of clause 11.14 the Buyer agrees to pay production overage charges on the excess production calculated on the price per square metre basis specified in the Special Order.

(3.6) "Special Order" means a Contract for customised Goods, or Goods that are not listed in Gradus' current standard product list.

(3.7) 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 5.3 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 pounds Sterling no later than 30 days following the date of an invoice, save that payment shall become immediately due upon the occurrence of any of the events referred to in condition 12.2 hereof.

(4.2) The Buyer shall be deemed to have accepted the invoice if it fails to 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) Gradus agrees in writing that the price is payable by instalments if the Buyer has agreed to take specified quantities of Goods in instalments and: (i) the Buyer defaults on the payment of any invoice due to be paid; or (ii) 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.

(4.4) The time of payment shall be of the essence of the Contract. Gradus reserves the right to suspend provision of the Goods 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 any other default on the part of Gradus may have occurred.

(4.5) Gradus reserves the right to alter or withdraw at any time any credit allowed to the Buyer.

(4.6) Gradus may at any time appropriate sums received from the Buyer as it thinks fit, notwithstanding any purported appropriation by the Buyer.

(4.7) Without prejudice to any other rights it may have, Gradus is entitled to charge interest at 5% above the current monthly London Inter Bank Offer Rate on overdue payments of the price of the Goods or the price of any instalment thereof.

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, or time of performance of the Services shall not be of the essence of the Contract. Gradus shall not be liable for any delay beyond its control.

(5.3) If the Buyer is unable to accept delivery of the Goods within 7 days of Gradus giving notice that the Goods are ready for delivery, Gradus may at its sole discretion without prejudice to the rights: (i) 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 (ii) immediately raise an invoice for the price of the Goods. Storage charges shall accrue at the prevailing daily storage rates published at www.gradusworld.com.

(5.4) 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.

(5.5) Preparation - Please ensure that the delivery address (the "Premises") is ready to accept delivery of the Goods at the agreed time of delivery. Please warn Gradus if the Premises are not ready to accept delivery.

(5.6) Packaging - The Buyer will be responsible for disposing of any packaging, crates etc.

(5.7) Accidental Damage - Gradus and its subcontractors are careful not to cause damage when delivering the Goods. If Gradus feels the Goods may be damaged, or your Premises or property may be damaged during delivery because of restricted access or for any other reason, Gradus shall warn you of that fact and we will not be under any obligation to deliver the Goods. If Buyer instructs Gradus to continue to deliver the Goods even though we have warned you that damage may occur, we accept no responsibility for any damage that actually occurs to Buyer's or any third party's Premises, property or the Goods during delivery.

(5.8) Safety Precautions - Gradus shall not be responsible for unloading the Goods at the delivery address unless otherwise agreed. The Buyer shall ensure that persons receiving delivery of the Goods are adequately trained in handling heavy loads and any relevant regulatory requirements are adhered to.

(5.9) Failed Delivery - If Gradus or its subcontractor attempts to deliver the Goods and it cannot deliver because: (i) no-one is available to take delivery of the Goods at the Premises; or (ii) the delivery vehicle cannot gain safe access to the vicinity of the Premises; or (iii) the Premises or the vicinity is not in a suitable condition to make safe delivery; (iv) the delivery route to the Goods is blocked or the premises or property may occur and the Buyer has agreed to stop the delivery, then we will return the Goods to our warehouse while alternative delivery arrangements are made. We shall be entitled to charge you for redelivering the Goods at a rearranged time and date and we shall be entitled to impose storage charges in accordance with conditions 5.3) above.

(5.10) 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 of the Buyer for the purpose of sections 44, 45 and 46 of the Sale of Goods Act 1979.

(5.11) 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.

(5.12) Unless otherwise specified in the relevant order, Goods for export shall be delivered Ex-Works Gradus' warehouse, within the meaning given to such term in the International Chamber of Commerce INCOTERMS (as revised from time to time).

(5.13) 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 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' own vehicles have not been used to deliver the Goods); (i) within five days of delivery for loss, damage or non-compliance with the Contract; or (ii) 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 all reasonable steps to replace or repair the Goods at its expense but the Buyer shall remain liable for 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 and sundry materials 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. CANCELLATIONS AND RETURNS

(8.1) 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.

(8.2) 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.

(8.3) 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: (i) Gradus is satisfied that the Goods are in as good a marketable condition then Gradus may offer to credit the Buyer for the value of the returned Goods as it sees fit, but for the avoidance of doubt any such credit offered to the Buyer will not exceed 85% of the invoice value of the Goods. If the parties cannot agree a suitable value for the returned Goods, the Buyer shall collect the Goods from Gradus; (ii) the returned Goods are not in good and marketable condition or the price paid for the Goods pursuant to 8.3(i), Gradus shall notify the Buyer and the Buyer shall collect the Goods within ten days of receiving such notification. If the Goods have not been collected by the Buyer within a ten 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.

9. RISK AND TITLE

(9.1) 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 the carpet price and any other amount 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.

(9.2) Pending payment of the full purchase price of the Goods pursuant to a Contract, the Buyer shall at all times keep the Goods comprehensively insured against loss or damage by accident, 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.

(9.3) 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 only) be made by the Buyer as agent for Gradus. The proceeds of any resale or disposal shall be paid to Gradus by the Buyer in full and unconditionally.

(9.4) 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 12.2, 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: (i) enter upon any premises or land occupied or owned by the Buyer to remove the Goods which the Buyer hereby authorises; or (ii) require the Buyer to deliver up all or any part of the Goods to Gradus.

10. INFRINGEMENT OF THIRD PARTY RIGHTS

(10.1) 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.

(10.2) 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: (i) modify or replace the Goods or re-perform the Services in order to avoid the infringement; or (ii) procure for the Buyer the right to continue using the Goods or benefit from the Services or benefit from the Goods at the price paid by the Buyer less depreciation at the rate Gradus applies to its own assets and equipment.

(10.3) If any claim is made or action brought or threatened which alleges infringement of the rights of any third party: (i) the Buyer shall notify Gradus as soon as it becomes aware of any such claim; (ii) Gradus shall have control over and shall conduct any such proceedings in such a manner as it shall determine; and (iii) the Buyer shall provide all reasonable assistance as Gradus may request.

(10.4) 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.

(10.5) If Gradus or its employees or agents design Goods pursuant to a commission from the Buyer (whether to fulfil an order or otherwise), any 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 10.5.

11. WARRANTIES AND LIABILITY

(11.1) The Buyer shall have the benefit of the product warranties applicable to the Goods for the specified warranty periods (such as wear and tear, anti-static and stain / fade) subject to any terms and conditions contained therein. Summary details of the warranties are printed on the reverse of the samples. Further details are available from Gradus on request.

(11.2) Gradus warrants that the Goods delivered by Gradus is subject to the following conditions and the provisions of conditions 11.8 to 11.22: (i) Gradus is not liable for a defect in the Goods caused by fair wear and tear, abnormal or unsuitable conditions of storage or use, an act, neglect or default of the Buyer or a third party; (ii) Gradus is not liable for a defect in the Goods unless it is notified to Gradus in accordance with condition 11.3 as the case may be; and (iii) no complaint can be considered where any fault or damage has been caused by improper installation, improper clearing or any other such abuse.

(11.3) Any claim by the Buyer under the warranty given in condition 11.1 above must be notified to Gradus within one month of discovering the defect, after which Gradus shall have no liability to the Buyer.

(11.4) In the event of a valid claim made pursuant to condition 11.3, Gradus undertakes at its option either to repair the Goods to new condition or to replace the Goods at its expense but shall not be under any further or other liability to any person in connection with the defect.

(11.5) Except as set out in this condition 11, all conditions, warranties and representations, expressed or implied by statute, common law 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.

(11.6) Nothing herein shall impose any liability on 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 the storage and handling of the Goods.

(11.7) 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.

(11.8) The Contract shall not constitute a sale by description or sample.

(11.9) Subject to the provisions in condition 11.22 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: (i) loss of or damage incurred by the Buyer as a result of third party claims; (ii) loss of actual or anticipated profits; (iii) loss of business opportunity; (iv) loss of anticipated savings; (v) loss of goodwill; (vi) injury to reputation; or (vii) any indirect, special or consequential loss or damage whatsoever

caused even if Gradus was advised of the possibility of them in advance. Gradus strongly advises you to insure against all such potential loss, damage, expense or liability.

(11.10) Buyer Drawings and Specifications - Gradus shall not be liable for imperfect Goods or Services caused by inaccuracies in any drawing bills of quantities or specifications supplied by the Buyer.

(11.11) Tolerances - Whilst every effort is made to manufacture the Goods to the agreed dimensions, due to the nature of the different batches, Gradus will not be liable to the Buyer for slight differences in colour or tone of the Goods unless the Buyer expressly states in the order that the Goods must be an exact colour match.

(11.12) Pattern Matching - Geometric designs are subject to pattern lines due to sharp angle changes in pile direction. Such lines repeat at intervals and are not considered manufacturing defects. Perfect pattern alignment cannot be guaranteed. Whilst precautions are taken during manufacturing to produce a dimensionally straight pattern, this is not guaranteed. Installers must exercise care to minimise alignment problems.

(11.13) Installation - Gradus accepts no liability for defects in the Goods caused by a failure to install the Goods in accordance with Gradus' installation instructions where Gradus has not provided the installation Services.

(11.14) Tolerances - Whilst every effort is made to manufacture the Goods to the agreed dimensions, due to the nature of the Goods some variations are unavoidable. The British Standard Institute permits manufacturing tolerances of +/- 1.25% ("Permitted Tolerance") of the agreed dimensions (Clause 5 BSS3655) and Gradus shall not be liable to the Buyer for any variation between the Goods and the agreed dimensions falling on or within the Permitted Tolerance. Any claim by the Buyer that the Goods exceed the Permitted Tolerance will only be considered by Gradus after the Goods have been inspected by Gradus' representative.

(11.15) Discoloration - Gradus accepts no liability for normal discoloration or fading of the Goods due to soiling caused by everyday use, exposure to sunlight or chemicals not approved for use with the Goods. The Goods should be carefully maintained by the Buyer to minimise any discoloration.

(11.16) Goods manufactured with natural products such as wood or cork will vary in colour, shade and/or grain all of which are characteristic of the material. In time, natural products may fade through exposure to sunlight.

(11.17) Shoe Damage - Due to the severe loading of weight on a small area, carpets and other types of flooring are susceptible to damage from the use of high heels or other types of unsuitable shoes. Gradus accepts no liability for damage or the impaired performance of the Goods, where the Goods have been damaged by the use of such shoes.

(11.18) Care and Maintenance - To prolong the life and the performance of the Goods the Buyer should take care to follow industry standard care and maintenance procedures. Gradus shall at the Buyer's request provide the Buyer with a maintenance guide setting out Gradus' recommended care procedures. Gradus recommends the use of Gradus branded matted systems in areas of heavy or commercial use to preserve the condition of the Goods. Gradus will not be liable to the Buyer for defects in the Goods arising from a failure to follow the recommended care procedures.

(11.19) Pile Pressure / Reversal and Shading - Cut pile yarn carpets can develop pile reversal in certain environments. Manufactured carpet pile lies uniformly in one direction, however for reasons unknown, permanent changes to the direction of the carpet pile can occur. This phenomenon causes a permanent change in the appearance of the carpet due to the way light is reflected off the tips and the sides of the yarn because the pile lies in different directions. As a result certain Goods may exhibit shading with patches of light and dark areas. Various terms are used to describe the appearance of the light and dark areas including "watermarking", "shading" and "pooling". Pile reversal and shading is not caused by a defect in the materials or the manufacturing processes used to create the carpet and the Buyer's responsibility for the long term durability of carpets. In common with standard industry practice Gradus does not accept any liability if the Goods display shading or pile reversal and the Buyer shall not be entitled to reject the Goods in such circumstances.

(11.20) Subject to conditions 11.9 and 11.22, Gradus' entire liability arising out of or in connection with the supply, non supply or delay in supplying the Goods and their installation, 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 150% of the value of the price of this Contract.

(11.21) Subject to conditions 11.9 and 11.22 but notwithstanding condition 11.20, 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 £500,000.

(11.22) Nothing in this agreement shall operate to exclude or restrict Gradus' liability for: (i) death or personal injury resulting from negligence; (ii) 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 (iii) fraud or deceit.

12. DEFAULT OR INSOLVENCY OF BUYER

(12.1) On or at any time after the occurrence of any of the events in condition 12.2, Gradus may: (i) stop any Goods in transit; (ii) suspend further deliveries to the Buyer; (iii) exercise its rights under condition 9; and terminate any Contract forthwith by giving notice to that effect to the Buyer.

(12.2) The events are: (i) the Buyer being in breach of any obligation under any Contract; (ii) 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 (iii) 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 an administrator to be appointed an administrator of it or such administrator being appointed; or (iv) an encumbrancer taking possession of a receiver or manager or administrative receiver being appointed, of the whole or any part of the Buyer's assets; or (v) 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; (vi) a proposal being made for a composition in satisfaction of the Buyer's debts or a scheme of arrangement of its affairs including a voluntary arrangement within the meaning of part I of the Insolvency Act 1986; (vii) the Buyer entering into an arrangement, compromise or composition in satisfaction of its debts with its creditors; (viii) the making of a bankruptcy order against the Buyer; (ix) the death of the Buyer; or (x) any analogous event to (i) - (ix) above occurring in any jurisdiction.

(12.3) On termination of a Contract pursuant to condition 12.1, 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.

13. 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.

14. 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 control including but not limited to strikes or other industrial disputes, lock-outs, accidents, war, acts of God, flood, fire, adverse weather conditions, terrorism, riot, civil commotion, acts of government or a reduction in or unavailability of raw materials from normal sources of supply, but for the avoidance of doubt nothing shall excuse the Buyer from the payment provisions under these conditions.

15. THIRD PARTIES

Any 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.

16. ASSIGNMENT AND SUB-CONTRACTING

Gradus may assign or sub-contract the whole or any part of the Contract thereof 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 the benefit its rights or benefits under a Contract without Gradus' prior written consent.

17. 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.

18. LAW AND JURISDICTION

The Contract shall in all respects be governed by English Law and shall be deemed to have been made in England and the Buyer and Gradus agree to the exclusive jurisdiction of the English Courts.