

Terms and Conditions of supply of goods by Gripsure (UK) Limited

1 Interpretation

1.1 In these Conditions the following definitions apply:

Business Day	means a day other than Saturday, Sunday, bank and public holidays;
Buyer	means the person or firm who purchases Goods from the Seller identified and whose details are set out in the Order;
Conditions	means the terms and conditions set out in this document;
Confidential Information	means any commercial, financial or technical information, information relating to the Goods, products, plans, know-how or trade secrets which is obviously confidential or has been identified as such, or which is developed by a party in performing its obligations under, or otherwise pursuant to the Contract;
Contract	means the agreement between the Seller and the Buyer for the sale and purchase of Goods incorporating these Conditions;
Delivery Date(s)	means as set out in the Order;
Delivery Location	means the address for delivery of the Goods as set out in the Order;
Force Majeure	means an event or sequence of events beyond a party's reasonable control preventing or delaying it from performing its obligations under the Contract including (but not limited to) an act of God, fire, flood, lightning, earthquake or other natural disaster; war, riot or civil unrest, strike, lockout or boycott or other industrial action; interruption or failure of supplies of power, fuel, water, transport, equipment or telecommunications service; or material required by for performance of the Contract, except any party's failure to pay shall not be an event of Force Majeure in any event;
Goods	means the anti-slip timber decking boards (and any other goods) set out in the Order to be supplied by the Seller to the Buyer;
Intellectual Property Rights	means copyright, patents, know-how, trade secrets, trade marks, trade names, design rights, rights in get-up, rights in goodwill, rights in confidential information, rights to sue for passing off, domain names and all similar rights and, in each case: whether registered or not; including any applications to protect or register such rights; including all renewals and extensions of such rights or applications; whether vested, contingent or future; to which the Seller is or may be entitled; and in whichever part of the world existing;
Order	means the Buyer's signed acceptance of the Seller's quotation for the supply of Goods set out in the Order Form;
Order Form	means the order form for the sale and purchase of the Goods;
Seller	means Gripsure (UK) Limited (07284779) whose registered office is at Lowin House, Tregolls Road, Truro, Cornwall TR1 2NA;
Specification	means as set out in the Order;
Value Added Tax or VAT	means value added tax under the Value Added Taxes Act 1994 or any other similar sale or fiscal tax applying to the sale of the Goods.

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- 1.2 Unless the context otherwise requires:
- 1.2.1 each gender includes the others;
 - 1.2.2 the singular includes the plural and vice versa;
 - 1.2.3 references to the Contract include these Conditions and the Order Form;
 - 1.2.4 references to persons include individuals, unincorporated bodies, government entities, companies and corporations;
 - 1.2.5 clause headings do not affect their interpretation;
 - 1.2.6 general words are not limited by example; and
 - 1.2.7 references to any legislation will be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

2 Application of these terms and conditions

- 2.1 These Conditions apply and form part of the Contract between the Seller and the Buyer. They supersede any previously issued terms and conditions of supply.
- 2.2 No terms or conditions endorsed on, delivered with, or contained in the Buyer's purchase order, confirmation of order, specification or other document will form part of the Contract.
- 2.3 No variation of these Conditions or to an Order, or to a quotation from the Seller will be binding unless expressly agreed in writing and executed by a duly authorised signatory on behalf of the Seller.
- 2.4 Each Order by the Buyer to the Seller will be deemed to be an offer to purchase Goods and subject to these Conditions.
- 2.5 The Seller reserves the right at all times to reject any Order, in whole or in part, at its sole discretion.
- 2.6 Any quotation by the Seller for the provision of Goods will be deemed to be:
- 2.6.1 an invitation to treat (and shall not be an offer) by the Seller to supply Goods on and subject to these Conditions; and
 - 2.6.2 will be valid for 28 days only from the date of issue.
- 2.7 Marketing and other descriptive matter relating to Services are illustrative only, and do not form part of the Contract. The Customer agrees that, in placing an Order, it has not relied on any representation or statement by the Seller not set out in the Contract.
- 2.8 A Contract will be formed upon the earlier to occur of:
- 2.8.1 written acceptance by the Seller of the Buyer's Order; or
 - 2.8.2 the commencement of the Contract by the Seller.
- 2.9 The Seller will have no obligation to prepare Goods for dispatch until any payments required as initial payments pursuant to the Order Form have been made and the Seller shall have no liability to the Seller in the event of delayed payment.

3 Price

- 3.1 The Price for the Goods will be as set out in the Order or in default of such provision will be calculated in accordance with the Seller's standard scale of charges in force on the date of formation of the Contract.
- 3.2 The Price:
- 3.2.1 does not include delivery unless stated in the Order and is charged in addition as set out in the Order or at standard rates as appropriate; and
 - 3.2.2 does not include Value Added Tax which will be charged in addition at the then applicable rate.

4 Payment

- 4.1 The Seller shall issue its invoice for the Goods when the Order is accepted.

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- 4.2 The Buyer will pay all invoices in full without deduction or set-off in cleared funds in accordance with the terms of the invoice but if no payment terms are stated then within 7 days of the date of the invoice.
- 4.3 Time of payment is of the essence. Where sums due hereunder are not paid in full by the due date:
- 4.3.1 the Seller may, without limiting its other rights, charge interest on such sums at 3% year above the base rate of Lloyds Bank Plc from time to time in force, and
- 4.3.2 interest will accrue in arrears on a daily basis, and apply from the due date for payment until actual payment in full, whether before or after judgment.
- 4.4 VAT will be charged by the Seller and paid by the Buyer at the then applicable rate.
- 4.5 Goods will not be shipped or permitted to be collected unless: (i) payment has been received in full; or (ii) the Buyer has an account and is within the credit limit and the Seller shall have no liability to the Buyer in the event of delayed payment.
- 5 Credit limit for Buyers with accounts**
- If the Seller has expressly agreed ongoing credit terms with the Buyer then Seller may set and vary the credit limit from time to time at the Seller's discretion and may withhold all further supplies if the Buyer exceeds such credit limit.
- 6 Delivery**
- 6.1 The Goods will be:
- 6.1.1 delivered by or for the Seller to the Delivery Location on the date(s) specified in the Order; or
- 6.1.2 made available for collection by the Buyer at the Seller's premises set out in the Order. The Buyer will collect the Goods within the period specified in the Order.
- 6.2 The Goods will be deemed delivered:
- 6.2.1 if delivered by or for the Seller under clause 6.1.1, on arrival of the Goods at the Delivery Location;
- 6.2.2 if collected by the Buyer under clause 6.1.2, on completion of loading at the Seller's, or carrier's as the case may be, premises.
- 6.3 The Goods may be delivered by instalments if provided in the Order. Any delay in delivery or defect in an instalment will not entitle the Buyer to cancel any other instalment.
- 6.4 Delivery of the Goods, or part thereof, will be accompanied by a delivery note stating the details of the Order
- 6.5 The Seller will use its reasonable endeavours to meet Delivery Dates but such dates are approximate only, and time of delivery is not of the essence.
- 6.6 The Seller will not be liable for any delay in or failure of delivery caused by:
- 6.6.1 the Buyer's failure to: (i) make the Delivery Location available as required for delivery of the Goods; or (ii) provide the Seller with adequate instructions, for delivery or otherwise relating to the delivery of the Goods;
- 6.6.2 the Buyer's failure to collect the Goods from the Seller's premises; or
- 6.6.3 an event of Force Majeure.
- 6.7 If the Buyer fails to accept delivery of or collect the Goods as provided in clause 6.1.1 or 6.1.2 on the date or within the period set out in the Order:
- 6.7.1 delivery of the Goods will be deemed to have occurred at 5:00 pm on the second Business Day following such date or the last day of such period; and
- 6.7.2 the Seller will store and insure the Goods pending delivery, and the Buyer will pay reasonable storage and insurance charges.

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6.8 If ten Business Days following the due date for delivery or collection or the last day of the period for delivery or collection of the Goods, the Buyer has not taken delivery of or collected them, the Seller may resell or otherwise dispose of the Goods. The Seller will:

6.8.1 deduct reasonable storage charges and costs of resale; and

6.8.2 account to the Buyer for any excess of the resale price over, or invoice the Buyer for any shortfall of the resale price below, the price paid by the Buyer for the Goods.

7 Title and risk

7.1 Risk in the Goods will pass to the Buyer on completion of delivery or when the Goods are transferred to the carrier under clause 6.1.

7.2 Title to the Goods will pass to the Buyer once the Seller has received payment in full for the Goods.

7.3 Until title to the Goods has passed to the Buyer, the Buyer will:

7.3.1 hold the Goods as bailee for the Seller;

7.3.2 store the Goods separately from all other material in the Buyer's possession;

7.3.3 take all reasonable care of the Goods and keep them in reasonable condition;

7.3.4 insure the Goods: (i) with a reputable insurer (ii) from the date of delivery (iii) against all risks (iv) for an amount at least equal to the price (v) noting the Seller's interest on the policy;

7.3.5 ensure that the Goods are clearly identifiable as belonging to the Seller;

7.3.6 not remove or alter any mark on or packaging of the Goods;

7.3.7 inform the Seller as soon as possible if it becomes subject to any of the events set out in clause 14.1; and

7.3.8 provide the Seller such information concerning the Goods as the Seller may request from time to time.

7.4 Notwithstanding clause 7.3, the Buyer may use or resell the Goods in the ordinary course of its business until such time as it becomes aware or ought reasonably to have become aware that an event specified in clause 14.1 is or is likely to occur.

7.5 If, at any time before title to the Goods has passed to the Buyer, the Buyer informs the Seller, or the Seller reasonably believes, that the Buyer has or is likely to become subject to any of the events specified in clause 14.1, the Seller may:

7.5.1 require the Buyer at the Buyer's expense to re-deliver the Goods to the Seller; and

7.5.2 if the Buyer fails to do so promptly, enter any premises where the Goods are stored and repossess them.

8 Acceptance and Warranty

8.1 Acceptance of the Goods occurs on delivery and if the Buyer has not notified the Seller of non-acceptance after unloading the Goods then the Goods are deemed to be accepted.

8.2 Subject to clauses 8.5 and 8.6, the Seller warrants that for a period of 12 months from delivery (the **Warranty Period**), the Goods will:

8.2.1 conform in all material respects to the Specification; and

8.2.2 be free from material defects in design, material and workmanship;

8.3 The Seller will, at its option, repair, replace or refund the price of defective Goods, provided that and subject to clause 8:

8.3.1 the Buyer informs the Seller in writing during the Warranty Period and within 5 Business Days of discovery that some or all of the Goods do not comply with clause 8.1; and

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- 8.3.2 the Buyer returns the defective Goods to the Seller at the Buyer's expense (subject to refund if the Goods are defective) and gives the Seller a reasonable opportunity to examine the defective Goods;
- 8.4 These Conditions will apply to any Goods repaired or replaced under clause 8.3.
- 8.5 The Seller will not be liable for any failure of the Goods to comply with clause 8.1:
- 8.5.1 where such failure arises by reason of fair wear and tear, wilful damage, negligence, abnormal working conditions, or could be expected to arise in the normal course of use of the Goods;
- 8.5.2 to the extent caused by the Buyer's failure to comply with the Seller's instructions in relation to the Goods, including any instructions on installation, operation, storage and maintenance;
- 8.5.3 to the extent caused by the Seller following any specification or requirement of the Buyer in relation to the Goods;
- 8.5.4 where the Buyer modifies any Goods without the Seller's prior agreement or, having received such agreement, not in accordance with the Seller's instructions; or
- 8.5.5 where the Buyer uses any of the Goods after notifying the Seller that it does not comply with clause 8.1.
- 8.6 the Seller will not be liable for any failure of the Goods to comply with clause 8.1 due to faults arising from the fact that the Goods are a natural product and will be exposed to external weather and including without limitation the following:
- 8.6.1 the visual appearance of the Goods will vary and the colour of the Goods may vary within any delivery batch, compared to any samples or on our website;
- 8.6.2 small surface splits may be apparent but once installed on site these will close due to swelling from natural moisture ingress;
- 8.6.3 longer lengths may exhibit a degree of warping which can be corrected during the installation;
- 8.6.4 knots may be present varying in frequency size and position and if on the edge may become loose during transport or after installation;
- 8.6.5 swelling will occur as the result of pressure pre-treatment by up to as much as 4% of the finished size and seasonal weather variations during the course of the year will cause the decking to shrink and swell;
- 8.6.6 the Goods are supplied with a tolerance of up to +/- 2mm width and depth and up to +25mm length and the non slip is +/- 2 mm width and height; and
- 8.6.7 colour of pale green (from the preservative treatment) will change over 12-18 months as the Goods weather to a natural silver grey finish.
- 8.7 Except as set out in this clause 8:
- 8.7.1 the Seller gives no warranty in relation to the Goods; and
- 8.7.2 will be under no liability for their failure to comply with the warranty in clause 8.1.

In particular, the conditions implied by s.13 (sale by description) s.14 (implied terms about quality or fitness) and s.15 (sale by sample) of the Sale of Goods Act 1979 are expressly excluded and all other implied and express warranties are excluded to the fullest extent by law.

9 Obligations of the Buyer

- 9.1 The Buyer will:
- 9.1.1 place all Orders on these Conditions and ensure that the contents of any Order are complete and accurate;
- 9.1.2 ensure that the Specification which it provides is complete and accurate and contains all information the Seller may require;
- 9.1.3 co-operate fully with the Seller in relation to delivery or collection of the Goods

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- 9.2 Right of return – Goods can be returned, noting the following conditions:
- 9.2.1 The Buyer bears the cost of returning the goods, which will be the same as the amount that the Seller charges the Buyer for the delivery.
 - 9.2.2 The Buyer shall make available the goods for collection by the Seller at a date and within a 6 hour time window on that date or return them to the Seller, without undue delay and in any event not later than 14 days from the day on which the Buyer communicated cancellation from this contract to the Seller. The deadline is met if the Buyer sends back the goods before the period of 14 days has expired.
 - 9.2.3 The goods must be returned in the same condition as when they were received by the Buyer.

10 Liability

- 10.1 The Seller does not exclude its liability:
- 10.1.1 for death or personal injury caused by its negligence;
 - 10.1.2 for breach of the terms implied by s 12 of the Sale of Goods Act 1979 and by s 2 of the Supply of Goods and Services Act 1982;
 - 10.1.3 under the Consumer Protection Act 1987; or
 - 10.1.4 for fraud or fraudulent misrepresentation.
- 10.2 The Seller will not be liable for:
- 10.2.1 loss of use or any delays to any projects or construction works;
 - 10.2.2 any form of indirect, consequential or special loss; or
 - 10.2.3 any loss of or failure to realise expected profit, revenue or savings or any other form of pure economic loss, whether any such loss is direct or indirect;
- and, in each case, however arising.
- 10.3 Subject to clause 10.1, the Seller limits its liability (however arising) in respect of or in connection with the Goods and otherwise in connection with the Contract, to the total price of Goods supplied.

11 Intellectual Property Rights

- 11.1 All rights, title and interest in all Intellectual Property Rights in the Goods and names of the Goods are owned by the Seller. The Buyer shall not attempt to copy or replicate or take any action that might infringe or cause damage to such Intellectual Property Rights
- 11.2 The Seller will defend or, at its option, settle any action brought against the Buyer arising from any claim that the use of the Goods by the Buyer in accordance with the Contract infringes any third party Intellectual Property Right, and indemnify the Buyer against all reasonable costs incurred by the Buyer in connection with such claim.
- 11.3 The Seller's obligations under clause 11.1 will not apply to Goods modified or used by the Buyer other than in accordance with these Conditions. The Buyer will indemnify the Seller against all reasonable costs and expenses incurred by the Seller in connection with any claim arising from such modification or use.
- 11.4 The Seller's obligations under clause 11.1 are conditional on the Buyer:
- 11.4.1 promptly advising the Seller in writing of any claim or action;
 - 11.4.2 making no admission as to, or settlement or compromise of any claim or action without the Seller's prior written consent;
 - 11.4.3 giving the Seller sole conduct of any defence and any settlement negotiations; and
 - 11.4.4 co-operating fully with the Seller and providing the Seller with all reasonable assistance in the defence or settlement of such claim or action.
- 11.5 The Buyer's reasonable costs of compliance with clauses 11.4.3 and 11.4.4 will be paid by the Seller.

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11.6 The provisions of this clause 11 set out the Seller's entire liability and the Buyer's sole right in respect of third party Intellectual Property Rights infringement claims or actions.

12 Confidentiality

12.1 Each party shall keep confidential all Confidential Information of the other party and will only use the other's Confidential Information as required to perform the Contract. The provisions of this clause will not apply to:

- 12.1.1 any information which was in the public domain at the date of the Contract;
- 12.1.2 any information which comes into the public domain subsequently other than as a consequence of any breach of the Contract or any related agreement;
- 12.1.3 any information which is independently developed by the other party without using information supplied by the first party; or
- 12.1.4 any disclosure required by law or a regulatory authority or otherwise by the provisions of the Contract.

12.2 This clause 12 will remain in force for a period of five years from the date of the Contract.

13 Force Majeure

13.1 A party will not be liable if delayed in or prevented from performing its obligations due to and event of Force Majeure, provided that it:

- 13.1.1 promptly notifies the other of the event of Force Majeure and its expected duration; and
- 13.1.2 uses reasonable endeavours to minimise the effects of that event.

13.2 If, due to an event of Force Majeure, a party:

- 13.2.1 is or will be unable to perform a material obligation; or
- 13.2.2 is delayed in or prevented from performing its obligations for a continuous period exceeding 30 days then the parties will, within 30 days, renegotiate the Contract to achieve, as nearly as possible, the original commercial intent.

14 Termination

14.1 The Contract may be terminated forthwith at any time by either party on written notice if the other:

- 14.1.1 suspends or threatens to suspend payment of its debts, or is unable to pay its debts as they fall due;
- 14.1.2 negotiates with its creditors for rescheduling of its debts, (b) makes a proposal to or compounds with its creditors in respect of its debts or (c) makes an application to court for protection from its creditors generally;
- 14.1.3 passes a resolution for winding-up or for the appointment of an administrator, or a liquidator or administrator is appointed in relation to the other, or a winding-up order is made in relation to the other;
- 14.1.4 a receiver or administrative receiver may be or is appointed in relation to the other or any of its assets;
- 14.1.5 any creditor of the other attaches, takes possession of, or any distress, execution or similar process is levied or enforced against, all or any part of the other's assets, and such attachment or process is not discharged within 14 days;
- 14.1.6 the other takes or suffers any action similar to any of the above in any jurisdiction;
- 14.1.7 there is a material change in the ownership or control of the other;
- 14.1.8 the other suspends trading, ceases to carry on business, or threatens to do either; or
- 14.1.9 the other, (being an individual) dies or ceases to be capable of managing his own affairs;

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- 14.2 In addition to its rights under clause 14.1 the Seller may terminate the Contract at any time immediately on written notice to the Buyer if the Buyer has failed to pay any amount due under the Contract on the due date within three Business Days of the due date.
- 14.3 On termination of the Contract for any reason:
- 14.3.1 the Buyer will immediately pay all invoices of the Seller then outstanding and not disputed in good faith;
 - 14.3.2 the Seller will, within 5 Business Days, invoice the Buyer for all Goods delivered or provided but not yet invoiced and the Buyer will pay such invoice within a further 5 Business Days (unless the invoice is disputed in good faith);
 - 14.3.3 the accrued rights and liabilities of the parties will not be affected; and
 - 14.3.4 any clause which expressly or by implication are to survive termination will do so.

15 General

15.1 Time

Unless stated otherwise, time is not of the essence of any date or period specified in these Conditions, the Order or otherwise in the Contract.

15.2 Assignment/Sub-contracting

Neither Party shall be entitled to assign their rights and obligations under this contract. The Buyer shall not be entitled to sub-contract their rights and obligations under this contract but the Seller shall be entitled to sub-contract any part or parts of their rights and obligations under this contract to third party sub-contractors.

15.3 No set-off

All payments by the Buyer will be made without set-off or counterclaim, free and clear of and without deduction for any tax, levy, duty, charge, or withholdings of any kind now or in the future, imposed in any jurisdiction unless a party is compelled by law to deduct or withhold any such amounts, in which case it will pay to the other such additional amount as will ensure that the other is paid the full amount it would have received but for such deduction or withholding.

15.4 Relationship

The parties are independent businesses and not principal and agent, partners, or employer and employee.

15.5 Severability

If any part of the Contract is found by a court, tribunal or other administrative body of competent jurisdiction to be unenforceable or invalid for any reason, that provision is to be severed from the Contract and the remaining provisions of the Contract will otherwise remain in full force.

15.6 Notices

Notices under the Contract will be in writing and sent to the persons and addresses set out in the Order. They may be given, and will be deemed received:

- 15.6.1 by first-class post: two Business Days after posting;
- 15.6.2 by airmail: seven Business Day after posting;
- 15.6.3 by hand: on delivery;
- 15.6.4 by facsimile: on receipt of a successful transmission report from the correct number; and
- 15.6.5 by e-mail: on receipt of a delivery or read receipt mail from the correct address.

15.7 Waiver

No delay, act or omission by either party in exercising any right or remedy will be deemed a waiver of that, or any other, right or remedy.

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15.8 Rights of Third Parties

The Contract is not enforceable by any third party under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

15.9 Priority

In the event of conflict, the terms of these Conditions prevail over those of the Order, including its schedule (if any).

15.10 Entire Agreement

The Contract constitutes the entire agreement between the parties in relation to its subject matter. No other terms apply.

15.11 Succession

The Contract will bind and benefit each party's successors and personal representatives.

15.12 Governing Law & Jurisdiction

15.12.1 The Contract and any dispute or claim arising out of, or in connection with, it, its subject matter or formation shall be governed by, and construed in accordance with, the laws of England and Wales.

15.12.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, the Contract, its subject matter or formation.