

# T. SAVILLE WHITTLE LIMITED CONDITIONS OF SALE

## 1. Interpretation

1.1 In these Conditions the following words shall have the following meanings:  
"Buyer" the person, firm or company, named overleaf who purchases the Goods from the Seller  
"Conditions" the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) any special terms and conditions agreed in writing between the Seller and the Buyer  
"Contract" the contract between the Seller and the Buyer for the sale and purchase of the Goods, incorporating these Conditions.  
"Goods" any goods agreed in the Contract to be supplied to the Buyer by the Seller (including any part of parts of them)  
"Seller" T. Saville Whittle Limited

## 2. Application of Conditions

2.1 These Conditions supercede any earlier edition of conditions of sale of the Seller and shall Govern the Contract to the exclusion of any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order specification or other document and the Buyer waives any right which it might have to rely on such terms or conditions.  
2.2 No variation to these Conditions or any representation about the Goods shall have effect Unless expressly agreed in writing and signed by a duly authorised representative of the Seller.  
2.3 Each order for Goods by the Buyer from the Seller shall be deemed to be an offer by the Buyer to purchase Goods subject to these Conditions.  
2.4 The Contract shall not exist until the Seller has accepted the order placed by the Buyer or (if earlier) the Seller delivers the Goods to the Buyer.  
2.5 The Buyer shall ensure that the terms of its order and any application specification are complete and accurate.  
2.6 Any quotation given by the Seller is valid for a period of one month only from its date, Provided that the Seller has not previously withdrawn it.

## 3. Description

3.1 The description of the Goods shall be as set out in the Seller's quotation.  
3.2 The Seller reserves the right without notification to substitute other components or materials that, in the Seller's sale opinion, are the nearest equivalent strength and quality where the components or materials are not readily available.  
3.3 All drawings, descriptive matter, specifications and advertising issued by the Seller and any descriptions or illustrations contained in the Seller's catalogues, brochures or web-site are issued or published for the sale purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract.  
3.4 No employee or agent of the Seller has any authority to give any additional representation or warranty relating to the Goods unless such warranty or representation is expressed in writing and signed by a duly authorised representative of the Seller.

## 4. Delivery

4.1 Unless otherwise agreed in writing by the Seller, delivery of the Goods Shall be made to the Buyer's normal place of business or such other place Agreed with the Buyer.  
4.2 Any date specified by the Seller for delivery of the Goods is an estimate only and time for Delivery shall not be made of the essence by notice. If no date has been so specified, delivery will be within a reasonable time.  
4.3 Subject to the other provisions of these Conditions the Seller shall not be liable for any loss (including loss of profit), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods nor will any delay entitle the Buyer to terminate or rescind the Contract.  
4.4 If for any reason the buyer will not accept delivery of any of the Goods when they are ready for delivery, or the Seller is unable to deliver the goods on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations, risk in the Goods will pass to the Buyer and the Seller may store them until actual delivery and the Buyer will be liable for all related costs and expenses (including without limitation storage and insurance).  
4.5 The Seller shall be entitled to deliver the Goods in instalments. Each instalment shall constitute separate contract and the failure by the Seller to deliver any one or more instalment shall not entitle the Buyer to treat the whole Contract as repudiated.

## 5. Short or Non-Delivery

5.1 The quantity of any consignment of Goods are recorded by the Seller upon dispatch from the Seller's place or business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.  
5.2 Any claim for short or non-delivery of Goods must be made in writing to the Seller within 3 working days of delivery in the event of short delivery and within 7 working days of the date of the Seller's invoice in the event of non-delivery.  
5.3 Any liability of the Seller for short or non-delivery of the Goods shall be limited to delivering the short or non-delivered Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

## 6. Price

6.1 The price for the Goods shall be the price set out in the quotation unless otherwise agreed between the parties.  
6.2 The price for the Goods shall be exclusive of any value added tax.  
6.3 Unless otherwise agreed between the parties, the price for the Goods shall be inclusive of all charges in relation to loading, unloading, carriage and insurance.

## 7. Payment

7.1 Unless otherwise agreed payment of the price for the Goods is due within 30 days following the end of the month in which the Seller's invoice is issued. Time for payment shall be of the essence.  
7.2 All sums payable to the Seller under the Contract shall become due immediately upon termination of the Contract despite any other provision.  
7.3 The Buyer shall make all payments due under the Contract without any deduction by way of setoff, counterclaim, discount, abatement or otherwise.  
7.4 If the Buyer fails to pay the Seller any sum due pursuant to the Contract (without prejudice to any other right or remedy available to it) the Seller Shall be entitled to:  
7.4.1 suspend further performance of the Contract or any other contract with the Buyer: and/or  
7.4.2 charge the Buyer interest on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of the Seller's bankers accruing on a daily basis until payment is received.  
7.4.3 payment on demand on a full indemnity basis of all costs and expenses incurred by the Seller in recovering all overdue sums.

## 8. Risk and Ownership

8.1 The Goods shall be at the risk of the Buyer from the time of delivery.  
8.2 Ownership of the Goods shall not pas to the Buyer until the Seller has received in full in cash or cleared funds:  
8.2.1 all sums payable in respect of the Goods, including interest on such sums; and  
8.2.2 all other sums which are or which become payable to the Seller from the Buyer on any account including any interest on such sums.  
8.3 Until ownership of the Goods has passed to the Buyer, the Buyer shall:  
8.3.1 hold the Goods on a fiduciary basis as the Seller's bailee;  
8.3.2 store the Goods separately to other goods of the Buyer or any third part in a way that they remain readily identifiable as the Seller's property;  
8.3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and  
8.3.4 maintain the Goods in satisfactory condition insured for their full price against all risks and hold the proceeds of insurance on trust for the Seller and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.  
8.4 The Buyer may resell the Goods before ownership has passed to it solely on the condition that any sale shall be on the Buyer's own behalf in the ordinary course of the Buyer's business and the Buyer shall deal as principal when making such sale.  
8.5 The Buyer's right to possession of the Goods shall terminate immediately if;

8.5.1 the Buyer has a bankruptcy order made against it or makes an arrangement or composition with its creditors or (being a body corporate) convenes a meeting of creditors (except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation), or has a receiver and/or manager, administrator or administrative receiver appointed at its undertaking or any part thereof, or a resolution is passed or a petition presented for the winding up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency of the Buyer; or  
8.5.2 the Buyer encumbers or in any way charges any of the Goods or suffers or allows any execution to be levied on its property or obtained against it, or fails to observe or perform any of its obligations under the Contract or any other contract between the Seller and the Buyer, or is unable to pay its debts or the Buyer ceased to trade.  
8.6 The Seller shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Seller.

8.7 The Buyer grants the Seller, its agents and employees on irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.

## 9. Warranty

9.1 The Seller warrants (subject to the other provisions of those Conditions) that upon delivery the Goods will comply with the Seller's specification for the Goods.  
9.1.1 The Seller warrants that the goods shall be of merchantable quality but gives no guarantee of their suitability for any specific purpose even if that purpose be known to the Seller. The Buyer shall test each delivery for the specific purpose for which it is to be used before using the bulk.  
9.2 The Seller shall not be liable for a breach of the warranty in condition  
9.2.1 the Buyer gives written notice of any defect to the Seller within 7 working days of delivery; and  
9.2.2 the Seller is given a reasonable opportunity of examining the Goods and the Buyer (if asked to do so by the Seller) returns the Goods to the Seller's place of business at the Seller's expense, unless otherwise agreed by the parties for the examination to take place there.  
9.3 The Seller shall not be liable for a breach of the warranty in condition 9.1 if;  
9.3.1 the Buyer makes any further use of the Goods after giving notice of any defect; or  
9.3.2 the defect arises because the Buyer failed to follow all prudent and accepted industry practice and the Seller's instructions as to the storage of use of the Goods; or  
9.3.3 the Buyer mixes the Goods with other goods or the Buyer or any third party without the written consent of the Seller.  
9.4 Subject to conditions 9.2 and 9.3. If any of the Goods do not conform with the warranty in condition  
9.5 the Seller shall at its option repair or replace such Goods (or the defective part) or refund the price of such Goods at the pro rata Contract rate and shall have no further liability for breach of the warranty in condition 9.1 in respect of such Goods. If the Seller so requests, the Buyer shall return the Goods or the parts of such Goods which are defective to the Seller.

## 10. Limitation of Liability

10.1 Subject to condition 9, the following provisions set out the entire liability of the Seller (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:  
10.1.1 any breach of these Conditions; and  
10.1.2 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.  
10.2 All warranties, conditions, guarantees and other terms implied by statute or common laws are, to the fullest extent permitted by law, excluded from the Contract.  
10.3 Nothing in these Conditions excludes or limits the liability of the Seller for death or personal injury caused by the Seller's negligence or fraudulent misrepresentation.

## THE BUYER'S ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF CONDITION 10.4

10.4 Subject to conditions 10.2 and 10.3:  
10.4.1 the Seller's total liability in contract, tort (including negligence or breach of statutory duty), is representation or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to £100,000; and  
10.4.2 the Seller shall not be liable to the Buyer for loss of profit, goodwill or business opportunity, anticipated saving delay or production downtime or any type of indirect or consequential loss or damage, costs, expenses or other claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

## 11. Events beyond the Seller's control

11.1 The Seller reserves the right to defer the date of delivery or to cancel the Contract or to reduce the volume of the Goods ordered by the Buyer (without liability to the Buyer) if the Seller is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Seller including, without limitation, acts of God, governmental actions, war or national emergency, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials.

## 12. Cancellation

12.1 The Buyer shall not be entitled to cancel the Contract except with the prior written agreement of the Seller on terms that the Buyer will indemnify the Seller against all loss (including loss of profit), costs (including labour and materials), damages, charges and expenses incurred by the Seller as a result of such cancellation.

## 13. General

13.1 The Buyer shall not assign the Contract or any part of it without the prior written consent of the Seller.  
13.2 The Seller shall be entitled to assign the Contract or any part of it to any person, firm or company.  
13.3 The Buyer shall not use the Seller's name, logo or other intellectual property rights in advertising or publicity without the Seller's prior written consent.  
13.4 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.  
13.5 Failure or delay by the Seller in enforcing or partially enforcing any Provision of the Contract will not be contract will not be construed as a waiver of any of its rights under the Contract.  
13.6 Any waiver by the Seller of any breach of, or any default under, any provision of the Contract by the Buyer will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract.  
13.7 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party of its principal place of business or such other address as may at the relevant time have been notified pursuant to this clause 13.7 to the party giving notice.  
13.8 Nothing in these Conditions confers on any third party any benefit or any right to enforce any of these Conditions except that a person who is the permitted successor to or assignee of the rights of a party is deemed to be a party to this Contract.  
13.9 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the jurisdiction of the English courts.