

The Customer's attention is in particular drawn to the provisions of conditions 9 and 10

1. INTERPRETATION

- 1.1. The definitions and rules of interpretation in this condition apply in these conditions.
Company: Swift & Whitmore Ltd trading as Jowitt Abrasives (registered office: 270 Coombs Road, Halesowen, West Midlands, B62 8AA; registered number 01312359)
Conditions: the Jowitt Abrasives Standard Terms of Sale as set out in this document as may be revised from time to time.
Contract: any contract between the Company and the Customer for the sale and purchase of the Goods, incorporating these conditions.
Customer: the person, firm or company who purchases the Goods from the Company.
Delivery Point: at the Company's premises unless otherwise stated in the "Deliver to" section of the Order Acknowledgement.
Goods: any goods agreed in the Contract to be supplied to the Customer by the Company (including any part or parts of them).
Order Acknowledgement: the Company's standard form acknowledging the Customer's order subject to these Conditions.
- 1.2. A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.3. Words in the singular include the plural and in the plural include the singular.
- 1.4. A reference to one gender includes a reference to the other gender.
- 1.5. Condition headings do not affect the interpretation of these conditions.

2. APPLICATION OF TERMS

- 2.1. Subject to any variation under condition 2.3 the Contract shall be on these Conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order, specification or other document).
- 2.2. No terms or conditions endorsed on, delivered with or contained in the Customer's purchase order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.
- 2.3. These conditions apply to all the Company's sales and any variation to these conditions and any representations about the Goods shall have no effect unless expressly agreed in writing by a director or appropriate manager with authority to bind the Company. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the contract. Nothing in this condition shall exclude or limit the Company's liability for fraudulent misrepresentation.
- 2.4. Each order or acceptance of a quotation from the Company for Goods by the Customer shall be deemed to be an acceptance by the Customer to purchase Goods subject to these conditions which shall be confirmed by the Company in accordance with condition 2.7.
- 2.5. No order placed by the Customer shall be deemed to be accepted by the Company until an Order Acknowledgement is issued by the Company or (if earlier) the Company delivers the Goods to the Customer. In any event, the Contract shall be subject to these Conditions.
- 2.6. The Customer shall ensure that the terms of its order and any applicable specification are complete and accurate.
- 2.7. Any quotation is given on the basis that no Contract shall come into existence until the Customer confirms its acceptance by sending an order form and the Company despatches an Order Acknowledgement to the Customer. Any quotation is valid for a period of 30 days only from its date, provided that the Company has not previously withdrawn it.

3. DESCRIPTION

- 3.1. The quantity and description of the Goods shall be as set out in the Company's quotation or Order Acknowledgement.
- 3.2. All samples, drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract and this is not a sale by sample.

4. DELIVERY AND DAMAGE IN TRANSIT

- 4.1. Unless otherwise agreed in writing by the Company, delivery of the Goods shall take place at the relevant Delivery Point. Unless otherwise specified in the Order Acknowledgement delivery will be ex-works.
- 4.2. Any dates specified by the Company for delivery of the Goods are an estimate only and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery shall be within a reasonable time of the date of despatch as set out in the Order Acknowledgement.
- 4.3. Subject to the other provisions of these conditions the Company shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by:
 - (a) any delay in the delivery of the Goods (even if caused by the Company's negligence), nor shall any delay entitle the Customer to terminate or rescind the Contract unless such delay exceeds 180 days; and/or
 - (b) Damage to the Goods caused by the Customer during the unloading process or anytime after delivery and the Customer shall remain liable for payment of any amounts due.
- 4.4. If for any reason the Customer has not paid for Goods on account or in advance as required or requested by the Company before Goods are despatched the Company shall reserve the right to either
 - (a) repudiate the contract ; or
 - (b) the Company may store the Goods until delivery, whereupon the Customer shall be liable for all related costs and expenses (including, without limitation, storage and insurance);
- 4.5. If for any reason the Customer fails to accept delivery of any of the Goods when they are ready for delivery, or the Company is unable to deliver the Goods on time because the Customer has not provided appropriate instructions, documents, licences or authorisations and without prejudice to the Company's right to treat the contract as repudiated:
 - (a) risk in the Goods shall pass to the Customer (including for loss or damage caused by the Company's negligence);
 - (b) the Goods shall be deemed to have been delivered;
 - (c) the Company may store the Goods until delivery, whereupon the Customer shall be liable for all related costs and expenses (including, without limitation, storage and insurance); and
 - (d) at the Company's discretion, the time for such delivery shall be extended by a period equal to that which elapsed between the Company requiring and actual receipt of adequate instructions.
- 4.6. Where the Company is responsible for delivery the Customer shall provide at the Delivery Point and at its expense adequate and appropriate equipment and manual labour for unloading the Goods.
- 4.7. If the Company delivers to the Customer a quantity of Goods of up to 10% more or less than the quantity accepted by the Company, the Customer shall not be entitled to object to or reject the Goods or any of them by reason of the surplus or shortfall and shall pay for such goods at the pro rata Contract rate.
- 4.8. The Company may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract.

- 4.9. Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Customer to repudiate or cancel any other Contract or instalment.
- 4.10. Acceptance by the Customer of each delivery and its payment for each such delivery in accordance with these Conditions are conditions precedent in the Company's obligations to make further deliveries, and the Company shall be entitled, if the Customer fails to accept or pay for any delivery in accordance with this Contract to cancel any undelivered part of the Contract without prejudice to any claim against the Customer for loss or damage.
- 4.11. All goods must be examined on receipt by the Customer or its agent and either acknowledged by signing the appropriate delivery note or, if appropriate rejected.
- 4.12. Where the Company has agreed to deliver the Goods, it will at its option either repair or replace free of charge all Goods damaged in transit provided that both the carriers (if any) and the Company itself receive written notification of the damage within 3 days of the delivery otherwise the Goods shall be at the risk of the Customer as soon as they are delivered to the Customer or his agent. The Company shall be under no obligation to give to the Customer notice under Section 32(3) of the Sale of Goods Act 1979.
- 4.13. The Company shall be under no liability whatsoever in respect of claims for damage or short delivery unless they are notified in writing to the Company within 3 days of receipt by the Customer of the Goods.

5. NON-DELIVERY OR AVAILABILITY

- 5.1. The quantity of any consignment of Goods as recorded by the Company upon despatch from the Company's place of business shall be conclusive evidence of the quantity received by the Customer on delivery unless the Customer can provide conclusive evidence proving the contrary.
- 5.2. The Company shall not be liable for any non-delivery of Goods (even if caused by the Company's negligence) unless the Customer gives written notice to the Company of the non-delivery within 3 days of the date when the Goods would in the ordinary course of events have been received.
- 5.3. Any liability of the Company for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.
- 5.4. All Goods are offered subject to availability of stocks and materials.

6. RISK/TITLE AND INSURANCE

- 6.1. Unless stated to the contrary in these Conditions the Goods are at the risk of the Customer from the time of despatch from the Company's premises.
 - 6.2. Ownership of the Goods shall not pass to the Customer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:
 - (a) the Goods; and
 - (b) all other sums which are or which become due to the Company from the Customer on any account.
 - 6.3. Until ownership of the Goods has passed to the Customer, the Customer shall:
 - (a) hold the Goods on a fiduciary basis as the Company's bailee;
 - (b) store the Goods (at no cost to the Company) separately from all other goods of the Customer or any third party in such a way that they remain readily identifiable as the Company's property;
 - (c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
 - (d) maintain the Goods in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Customer shall produce the policy of insurance to the Company.
 - 6.4. The Customer may resell the Goods before ownership has passed to it solely on the following conditions:
 - (a) any sale shall be effected in the ordinary course of the Customer's business at full market value; and
 - (b) any such sale shall be a sale of the Company's property on the Customer's own behalf and the Customer shall deal as principal when making such a sale; and
 - (c) the Customer shall account to the Company for and the Company shall have the right to claim all such sales proceeds.
 - 6.5. The Customer's right to possession of the Goods shall terminate immediately if:
 - (a) the Customer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) 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 of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Customer or notice of intention to appoint an administrator is given by the Customer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding up of the Customer or for the granting of an administration order in respect of the Customer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Customer; or
 - (b) the Customer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the Contract or any other contract between the Company and the Customer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Customer ceases to trade; or
 - (c) the Customer encumbers or in any way charges any of the Goods.
 - (d) the Customer commits any breach of these Conditions.
 - 6.6. The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.
 - 6.7. The Customer grants the Company, its agents and employees an 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 Customer's right to possession has terminated, to recover them.
 - 6.8. Where the Company is unable to determine whether any Goods are the goods in respect of which the Customer's right to possession has terminated, the Customer shall be deemed to have sold all goods of the kind sold by the Company to the Customer in the order in which they were invoiced to the Customer.
 - 6.9. On termination of the Contract, howsoever caused, the Company's (but not the Customer's) rights contained in this condition 6 shall remain in effect.
- 7. PRICE**
- 7.1. Unless otherwise agreed by the Company in writing, the price for the Goods shall be fixed by reference to the price quoted by the Company upon the date of despatch.
 - 7.2. The price for the Goods shall be exclusive of any value added tax and all costs or charges in relation to packaging, loading, unloading, carriage and insurance, all of which amounts the Customer shall pay in addition when it is due to pay for the Goods.
 - 7.3. Prices are based on the cost of materials, labour and other rates and prices prevailing at the date of the quotation by the Company. The Company reserves the right to amend such prices whether before or after acceptance of an order to take account of any price increases in prices payable by the Company whether for goods or for transport, freight, labour, insurance or tax.
 - 7.4. The Company reserves the right to make an additional charge in the following circumstances:

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- (a) in any circumstances whereby as a consequence of the Customer's request the Company incurs or is likely to incur additional expenses or costs which were unforeseen or not notified to the Company at the time of the Customer's order; or
- (b) if the Customer orders goods in such quantities as to require delivery of part loads; or
- (c) if collections from the Company's premises or deliveries are required outside normal working hours (ie 8.00 am to 4.00 pm Mondays to Thursday and 8.00 am to 12.00 pm Fridays or any public holidays). Such collections or deliveries shall be at the Company's discretion.
- 8. PAYMENT**
- 8.1. Subject to condition 8.4, payment of the price for the Goods is due in the currency set out in the quote on the last working day of the month following the month in which the Goods are invoiced.
- 8.2. Time for payment shall be of the essence.
- 8.3. No payment shall be deemed to have been received until the Company has received cleared funds.
- 8.4. All payments payable to the Company under the Contract shall become due immediately on its termination despite any other provision.
- 8.5. The Customer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise.
- 8.6. If deliveries are required in instalments over an extended period, each consignment may be invoiced separately.
- 8.7. If the Customer fails to pay the Company any sum due pursuant to the Contract, the Customer shall be liable to pay interest to the Company on such sum from the due date for payment at the annual rate of 3% above the base lending rate from time to time of Barclays Bank plc, accruing on a daily basis until payment is made, whether before or after any judgment. The Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.
- 9. QUALITY**
- 9.1. Where the Company is not the manufacturer of the Goods, the Company shall endeavour to transfer to the Customer the benefit of any warranty or guarantee given to the Company. The Company's liability for Goods supplied which are not manufactured by the Company shall be limited to it using reasonable endeavours to pass to the Customer the benefit of all warranties, representations or rights which it may have or received from the third party.
- 9.2. The Company warrants that (subject to the other provisions of these conditions) upon delivery and for the period up to and including the "use by date" printed on the label which accompanies the Goods (or despatch form) the Goods shall:
- (a) be reasonably fit for the purpose referred to in the Company's instructions as to use as referred to in clauses 9.8 and 9.9; and
- (b) be reasonably fit for any particular purpose for which the Goods are being bought if the Customer had made known that purpose to the Company in writing and the Company has confirmed in writing that it is reasonable for the Customer to rely on the skill and judgement of the Company.
- 9.3. The Company shall not be liable for a breach of the warranty OR any of the warranties in condition 9.2 unless:
- (a) the Customer gives written notice of the defect to the Company, and, if the defect is as a result of damage in transit to all relevant carriers, within 3 days of the time when the Customer discovers or ought to have discovered the defect; and
- (b) the Company is given a reasonable opportunity after receiving the notice of examining such Goods and the Customer (if asked to do so by the Company) returns such Goods to the Company's place of business for the examination to take place there.
- 9.4. The Company shall not be liable for a breach of the warranty OR any of the warranties in condition 9.2 if:
- (a) the Customer makes any further use of such Goods after giving such notice; or
- (b) the defect arises because the Customer failed to follow the Company's oral or written instructions as to the unloading, storage, installation, commissioning, use or maintenance of the Goods or in accordance with the guidelines set out in conditions 9.8 and 9.9 or (if there are none) good trade practice; or
- (c) the Customer alters or repairs such Goods without the written consent of the Company; or
- (d) any defect arises from fair wear and tear; or
- (e) the defect arises from the Customer's design specification, measurement or drawings; or
- (f) the defect arose in the Goods as a consequence of defects in goods or parts of goods which were manufactured and/or supplied by third parties used either independently of or in conjunction with the Goods supplied by the Company.
- 9.5. Subject to condition 9.3 and condition 9.4, if within the period referred to in clause 9.2 from the date of delivery any of the Goods do not conform with the warranty OR any of the warranties in condition 9.2 the Company shall at its option either:
- (a) repair or replace such Goods (or the defective part); or
- (b) refund the price of such Goods at the pro rata Contract rate provided that in (a) or (b), if the Company so requests, the Customer shall, at the Customer's expense, return the Goods or the part of such Goods which is defective to the Company.
- 9.6. If the Company complies with condition 9.5 it shall have no further liability for a breach of the warranty OR any of the warranties in condition 9.2 in respect of such Goods.
- 9.7. Any Goods replaced shall belong to the Company and any repaired or replacement Goods shall be guaranteed on these terms for the unexpired portion of the period referred to in clause 9.2.
- 9.8. The Customer must observe and follow the guidance and information relating to the application and use of the Goods which is contained in the Safety in the Use of Abrasive Wheels HS(G) 17 Booklet and Provision and Use of Work Equipment Regulations 1992, (as revised in 1998) and any subsequent related enactments or guidelines, copies of which can be obtained from Her Majesty's Stationery Office.
- 9.9. The Customer must observe and follow the guidance and information made available to the Customer as set out in the Company's literature on the use and or installation, maintenance and storage of goods.
- 10. LIMITATION OF LIABILITY**
- 10.1. Subject to condition 4, condition 5 and condition 9, the following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:
- (a) any breach of these conditions;
- (b) any use made or resale by the Customer of any of the Goods, or of any product incorporating any of the Goods; and
- (c) any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 10.2. All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) 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 Company:
- (a) for death or personal injury caused by the Company's negligence; or
- (b) under section 2(3), Consumer Protection Act 1987; or
- (c) for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or
- (d) for fraud or fraudulent misrepresentation.
- 10.4. Subject to condition 10.2 and condition 10.3:
- (a) the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract price; and
- (b) the Company shall not be liable to the Customer for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise, in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.
- 11. ASSIGNMENT**
- 11.1. The Company may assign the Contract or any part of it to any person, firm or company.
- 11.2. The Customer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.
- 12. FORCE MAJEURE**
- The Company reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Customer (without liability to the Customer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of 180 days, the Customer shall be entitled to give notice in writing to the Company to terminate the Contract.
- 13. GENERAL**
- 13.1. Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.
- 13.2. If any provision (including any clause or sub-clause) 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.
- 13.3. Failure or delay by the Company 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.
- 13.4. Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Customer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 13.5. The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 13.6. The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.
- 14. COMMUNICATIONS**
- 14.1. All communications between the parties about the Contract shall be in writing and delivered by hand or sent by pre-paid first class post or sent by fax:
- (a) (in case of communications to the Company) to its registered office or such changed address as shall be notified to the Customer by the Company; or
- (b) (in the case of the communications to the Customer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Customer set out in any document which forms part of the Contract or such other address as shall be notified to the Company by the Customer.
- 14.2. Communications shall be deemed to have been received:
- (a) if sent by pre-paid first class post, two days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting); or
- (b) if delivered by hand, on the day of delivery; or
- (c) if sent by fax on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day.
- 14.3. Communications addressed to the Company shall be marked for the attention of Sales.