

Terms & Conditions

Terms & Conditions for the sale of goods of Habasit (UK) LIMITED (“the Supplier”)

INTRODUCTION

These Conditions set out the entire terms and conditions upon which the Supplier has agreed to supply goods and/or services to the Customer and shall apply to the exclusion of any other terms and conditions including any other terms and conditions which the Customer may purport to apply whether through the use of any standard form documents or otherwise.

1. DEFINITIONS AND INTERPRETATION

1.1 In these Conditions the following words have the following meanings:

Conditions means these terms and conditions together with any other document incorporated into these Conditions in accordance with their terms;

Contract means a contract between the Customer and the Supplier for the sale and purchase of Goods and/or the performance of Services (as applicable) made subject to these Conditions which has come into force following the acceptance of an Order in accordance with Clause 2.3;

Customer: the person or firm who purchases the Goods and/or Services from the Supplier;

Force Majeure Event means any circumstance beyond the control of the Supplier including any act of God, war, riot, terrorism, explosion, abnormal, extreme or unusual weather conditions, failure of subcontractors or suppliers, inability or difficulties in obtaining raw materials or other supplies, loss of utilities, fire, flood, strike, lock out or industrial dispute and/or governmental or regulatory authority action;

Goods means the goods as detailed in any Order;

Insolvency Event means with respect to the Customer that:

(a) any meeting of creditors of the Customer is held or any arrangement or composition with or for the benefit of its creditors (including any voluntary arrangement as defined in the Insolvency Act 1986) is proposed or entered into by or in relation to the Customer;

- (b) the Customer ceases or threatens to cease carrying on business or is or becomes unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986;
- (c) a nominee, supervisor, receiver, administrator, administrative receiver or liquidator is appointed in respect of the Customer or any encumbrancer takes possession of, or any distress, lien, execution or other process is levied or enforced (and is not discharged within seven days) upon, the assets of the Customer;
- (d) a petition is presented for the winding-up of the Customer or a resolution for its winding up is passed;
- (e) a notice of intention to appoint an administrator is filed with the court or served on any creditor of the Customer;
- (f) an application for an administration order in respect of the Customer is issued at court;
- (g) a meeting is convened for the purpose of considering a resolution for the winding up of the Customer or the making of an application for an administration order or the dissolution of the Customer;
- (h) any Main or Territorial proceedings are opened within the meaning of the EC Regulation on Insolvency Proceedings 2000 with respect to the Customer; and/or
- (i) any event analogous to any of the foregoing occurs to the Customer in any jurisdiction;

Intellectual Property Rights means patents, rights to inventions, copyright and related rights, trademarks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

Order means the Customer's order for any Goods and/or Services as may be set out in any purchase order issued by the Customer to the Supplier or in any other written request for Goods and/or Services which is issued by the Customer to the Supplier from time to time (but excluding in either case any terms and conditions which the Customer may purport to apply in any such purchase order or other written order);

Price means the price payable by the Customer for the Goods and/or Services as set out in the applicable Order which has been accepted in accordance with Clause 2.3 or, where no price is detailed in the applicable Order, the Supplier's list price for the Goods and/or Services in question in force as at the date of delivery or performance (subject in either case to adjustment in accordance with

Clause 4.4 and/or 7.3);

Services means the services as detailed in any Order; and

Supplier means the applicable Habasit group company named in the Order in question.

1.2 In these Conditions and each Contract: headings are inserted for convenience only and shall not affect construction or interpretation; references to Clauses are to the Clauses of these Conditions; words denoting the singular shall include the plural and vice versa; words denoting any gender shall include all genders; any reference to any law, statute, statutory provision, statutory instrument, directive, subordinate legislation, code of practice or guideline shall be construed as a reference to the same as may be amended, consolidated, modified, extended, re-enacted or replaced from time to time; words and expressions not defined in these Conditions shall have the meanings as provided for under the Data Protection Act 1998; and use of words such as “include”, “including” and “in particular” shall not limit the generality of any preceding or following words which are not intended to be exhaustive.

2. BASIS OF CONTRACT

2.1 These Conditions apply to each Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which otherwise are implied by trade, custom, practice or course of dealing.

2.2 Each Order constitutes an offer by the Customer to purchase the Goods and/or Services in question in accordance with these Conditions. The Customer shall ensure that the terms of any Order submitted by it are complete, accurate and not misleading.

2.3 Each Order shall be deemed accepted on the earlier of: (a) the Supplier issuing a written acceptance of the Order; or (b) the Supplier commencing delivery of any Goods and/or commencing the performance (or preparing to commence the performance) of any Services.

2.4 The Supplier shall be under no obligation to accept any Orders which may be submitted to it from time to time and shall be entitled to decline to accept any Orders without liability or the need to give reason.

2.5 If any Order which has been accepted by the Supplier is cancelled by the Customer, the Customer shall indemnify the Supplier in full on demand for all costs and expenses incurred by the Supplier (including but not limited to labour

and materials used), loss of profits, damages and other charges incurred by the Supplier as a result of such cancellation.

3. STANDARDS

3.1 The Supplier warrants that all Goods supplied by it shall be free from material defects in material and workmanship on delivery and in accordance with any warranties provided by the Supplier.

3.2 The Supplier warrants that all Services performed by it shall be performed in a good and workmanlike manner exercising all reasonable skill, care and diligence and in accordance with prevailing industry practices and standards.

3.3 The Supplier may vary the specification for any Goods and/or Services prior to delivery if necessary in order to comply with any applicable statutory or regulatory requirement or for any other reason provided that in that case, the variation in question does not result in any material adverse change to the specification in existence at the Customer's Order for the Goods or Services in question was accepted.

3.4 The warranty provided in Clause 3.1 above is provided subject to any defects in the Goods arising from any drawing, design or specification supplied by the Customer, any defect arising from inappropriate handling, inadequate maintenance or storage, combinations with non-authorized products, fair wear and tear, wilful damage, negligence of the Customer or other third parties, abnormal or extraordinary working conditions or work-loads, failure to follow Supplier instructions (whether oral or in writing), misuse or alteration or repair of the Goods without the Supplier's approval, incorrect or defective installation of the Goods where the Supplier has not provided (or has provided limited) Services in respect of those Goods, for machines and tools normal wear (e.g. of blades, cutting pads, grinding drum laggings, wear rings), inappropriate power supply for electrical devices, and/or non-compliance with any applicable regulations or official Industrial standards.

3.5 The warranty provided in Clause 3.1 above does not extend to parts, materials or equipment not manufactured by the Supplier, in respect of which the Customer will only be entitled to the benefit of any such warranty or guarantee as is given by such manufacturer to the Supplier.

3.6 Each Contract represents the entire agreement between the parties relating to the supply of the Goods and/or Services in question and the Customer acknowledges that it will not rely on and has not relied on any statement,

promise or representation made by or on the behalf of the Supplier which is not set out in writing in the applicable Contract.

3.7 Any samples, drawings, measurements, descriptions, advertising, photographs, catalogues, websites or similar which may be provided by the Supplier concerning any Goods and/or Services are produced and provided solely for the purpose of giving an approximate idea of the Goods and/or Services described and such information and items shall not form part of any Contract nor have any contractual force.

4. DELIVERY AND PERFORMANCE

4.1 Where pursuant to any Contract: (a) the Supplier has agreed to make delivery to the Customer the Supplier shall deliver the Goods to the location as specified in the applicable Order on or around any delivery date as detailed in the Order or, if no delivery date is detailed in the Order, on the date as specified by the Supplier (although time of such delivery shall not be of the essence); or (b) the Customer is to collect the Goods from the Supplier then the Customer shall collect such Goods from the location advised by the Supplier during the usual working hours of the Supplier within 28 days of the date on which the Supplier advises the Customer that such Goods are ready for collection (and time for collection of such Goods shall be of the essence) and such collection shall constitute “delivery” for the purposes of these Conditions.

4.2 In the event that the Customer fails to:

- (a) accept delivery of any Order when the Supplier first attempts to make delivery; or
- (b) collect any Order within the time period required under Clause 4.1 then in either case:
- (c) risk of loss or damage occurring to the relevant Goods shall be deemed to pass to the Customer at the time when the Supplier first attempted to make delivery or upon the expiry of the time period specified in Clause 4.1 (as applicable);
- (d) for the purposes of Clause 7.6 delivery shall be deemed to have taken place on the date that the Supplier first attempted to make delivery or upon the expiry of the time period specified in Clause 4.1 (as applicable); and
- (e) the Customer shall indemnify the Supplier in full on demand for all costs and expenses incurred by the Supplier in storing the Goods in question and attempting re-delivery.

4.3 The Supplier may deliver Goods in installments, the Price of which shall be invoiced and paid for separately. Any such installment shall constitute a

separate Contract and any delay in delivery or defect in one installment shall not entitle the Customer to cancel any other installment.

4.4 The Supplier may deliver up to more or less than 5% of the volume of Goods comprised within any Order and the Customer shall not be entitled to reject any delivery on the basis of any difference in volume within such tolerances. In such circumstances the Price of the relevant Order shall be adjusted on a pro-rata basis to reflect the actual volume of Goods delivered.

4.5 The Supplier shall perform any Services at the location as specified in the applicable Order on or around the date for performance of those Services as detailed in the Order or, if no date is detailed in the Order, on the date specified by the Supplier (although time of performance shall not be of the essence). The Customer shall provide the Supplier with such access to any location where Services are to be performed as may be necessary to enable performance of the Services in question and, prior to the date on which the Supplier is to commence the performance of any Services, the Customer shall undertake at its own expense any preparatory works as may be specified in the Order or otherwise which are advised by the Supplier to the Customer as being reasonably necessary to enable the Supplier to perform the Services at the relevant location.

4.6 In the event that the Supplier is unable to perform any Services as a result of the Customer failing or delaying in complying with its obligations under Clause 4.5 then:

(a) the Customer shall indemnify the Supplier in full on demand for all costs and expenses incurred by the Supplier as a result of the Customer failing or delaying in complying with its obligations under Clause 4.5; and

(b) for the purposes of Clause 7.6 the Supplier shall be deemed to have commenced performance of the Services on the date that the Supplier would have commenced performance of the Services were it not for the Customer's failure or delay to comply with its obligations under Clause 4.5. 4.7 Where delivery of the Goods is to take place other than at the Supplier's premises, the Supplier will not be liable for any non delivery of the Goods (even if caused by the Supplier's negligence) unless written notice is given to the carrier and the Supplier within 7 days of the date when the Goods would in the ordinary course of events have been received. Any liability of the Supplier for non-delivery of Goods will be limited to replacing the Goods within a reasonable time or issuing a credit note against any invoice raised for such Goods.

5. WARRANTY CLAIMS

5.1 Any claim by the Customer which is based on any defect in the quality or condition of the Goods or the failure to correspond with specification must (whether or not delivery is refused by the Customer) be notified to the Supplier within 7 days from the date of delivery or (where the Supplier carries out Services in relation to the Goods) within 7 days of completion of the Services or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused, and the Customer does not notify the Supplier accordingly, the Customer will not be entitled to reject the Goods and the Supplier will have no liability for such defect or failure, and the Customer will be bound to pay the price as if the Goods and Services (where appropriate) had been delivered or performed in accordance with the Contract.

5.2 Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet specification, or the Services, is notified to the Supplier in accordance with these Conditions, the Supplier will be entitled to repair or replace the Goods (or the part in question) free of charge or, at the Supplier's sole discretion, refund to the Customer the price of the Goods and/or Services (or a proportionate part of the price of the Goods and/or Services), but the Supplier will have no further liability to the Customer.

5.3 The Customer shall on request:

- (a) permit the Supplier to access any premises where any Goods which are the subject of a warranty claim are located for the purposes of inspecting and testing those Goods ;
- (b) permit the Supplier to access any location where Services may have been performed which are the subject of a warranty claim for the purposes of inspecting and testing the output of those Services; and/or
- (c) promptly return to the Supplier (at the Customer's expense) any Goods which are the subject of a warranty claim.

5.4 The Customer shall on demand reimburse the Supplier for any reasonable costs and expenses which are incurred by it in investigating any warranty claim made by the Customer which is subsequently found to be invalid for any reason.

5.5 Compliance by the Supplier with its obligations under Clause 5.2 shall represent the Customer's sole and exclusive remedy (and the Supplier's only liability) in respect of any failure of the Goods to comply with the warranty set out at Clause 3.1.

5.6 The terms implied by sections 13 – 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from any Contract.

6. EXCLUSIONS FROM WARRANTY CLAIMS

6.1 The Supplier shall have no liability or responsibility to the Customer (whether under any Contract or otherwise) in respect of any failure of the Goods to comply with the warranty set out at Clause 3.1 or the failure of any Services to comply with the warranty set out at Clause 3.2:

(a) which is not notified by the Customer to the Supplier in accordance with Clause 5.1;

(b) in the event that the Customer fails to comply with its obligations under Clause 5.3;

(c) in the event that the Customer makes any further use of, or sells on the Goods and/or Services after becoming aware of any failure of the Goods and/or Services to comply with the warranty set out at Clause 3.1 or 3.2 (as applicable);

(d) which is attributable to handling and use of the Goods and/or Services and/or any failure by the Customer to follow good trade practice regarding the same;

(e) in the event that the Customer alters the Goods and/or Services (or permits any third party to do so) without the written consent of the Supplier;

(f) where any failure of the Goods and/or Services arises as a result of fair wear and tear, wilful damage, negligence, or abnormal or incorrect storage or working conditions;

(g) where any Goods and/or Services differ from their specification as a result of changes made to ensure that the Goods comply with any applicable legal or regulatory requirements; and/or

(h) which is attributable to the Goods and/or Services in question having been produced or performed by the Supplier in accordance with designs, specifications or other instructions provided to the Supplier by or on the behalf of the Customer.

7. PRICE AND PAYMENT

7.1 Any quotations which are provided by the Supplier do not constitute an offer which is capable of acceptance by the Customer and may be withdrawn by the Supplier without liability at any-time. Any quotations not withdrawn earlier by the Supplier shall automatically lapse 30 days after the date of issue.

7.2 All Prices are stated exclusive of the costs and expense of packaging, insuring and transporting the Goods to the Customer which shall be paid for by the Customer in addition.

7.3 The Supplier shall be entitled at any-time prior to invoicing the Customer for

the Price of an Order to increase that Price to reflect any increase to the Supplier's costs of sourcing, manufacturing and supplying the Goods in question and/or performing the Services in question.

7.4 All Prices are stated exclusive of VAT which shall be paid by the Customer in addition at the rate from time to time in force (subject to the provision of a VAT invoice by the Supplier).

7.5 Unless the Supplier has agreed to grant the Customer credit terms (or should the Customer have exceeded any credit limit set by the Supplier from time to time), the Customer shall pay the Price of each Order to the Supplier in full in cleared funds prior to the date of delivery or commencement of performance (as applicable).

7.6 Where the Supplier has agreed to grant the Customer credit terms then unless otherwise agreed in writing, the Supplier may invoice the Customer for the Price of each Order at any-time on or after completion of delivery or performance and the Customer shall pay all such invoices in full in cleared funds within 30 days from the end of the month of delivery.

7.7 Time of payment shall be of the essence.

7.8 The Supplier shall be entitled to suspend, vary or withdraw any credit terms granted by it to the Customer at any-time on notice.

7.9 In the event that the Customer fails to pay any sum due from it under any Contract (including the Price) by the due date for payment then without prejudice to any other rights or remedies available to it (whether under the applicable Contract or otherwise) the Supplier shall be entitled to charge interest on such amount together with the cost of recovery in each case, in accordance with the Late Payment of Commercial Debt (Interest) Act 1998.

7.10 The Price together with any other amounts which may be due to be paid by the Customer to the Supplier under any Contract shall be paid by the Customer in full in cleared funds without set-off, withholding, deduction or counterclaim.

7.11 All sums payable by the Customer to the Supplier under any Contract (including the Price) shall become immediately due and payable by the Customer upon termination of the Contract in question.

8. RISK AND TITLE

8.1 Risk of loss or damage occurring to Goods shall pass from the Supplier to the Customer upon completion of delivery of the Goods in question or as otherwise provided for under Clause 4.2. Risk of loss or damage occurring to the product of any Services shall pass from the Supplier to the Customer upon completion of the performance of the Services in question.

8.2 Ownership of any Goods delivered to the Customer and/or the product of any Services shall not pass from the Supplier to the Customer unless and until the Supplier has received from the Customer in full in cleared funds:

- (a) the Price of the Goods or Services in question; and
- (b) any other payment which is due to be paid by the Customer to the Supplier under any other Contracts in force from time to time.

8.3 Until title to any Goods or the product of any Services has passed to the Customer, the Customer shall:

- (a) hold those Goods or products on a fiduciary basis as the Supplier's bailee;
- (b) store those Goods or products separately from any other items held by the Customer so that they remain readily identifiable as the Supplier's property;
- (c) not remove, deface or obscure any markings on the Goods or products or their packaging which identifies the Goods or products as the Supplier's property; and
- (d) maintain those Goods or products in a safe and satisfactory condition and keep them insured against all usual risks for their full Price but, the Customer may resell on an arm's length basis or use any Goods or products in the ordinary course of its business.

8.4 The Customer's right of possession of any Goods or products in respect of which title has not passed to it shall immediately end in the event that the Customer suffers any Insolvency Event and the Customer shall notify the Supplier immediately should it suffer any Insolvency Event and shall also inform any receiver, manager, administrative receiver or similar who may be appointed with respect to any assets of the Customer that those Goods or products belong to the Supplier and are not assets belonging to the Customer.

8.5 The Customer shall allow the Supplier or its authorised representatives on request access to any premises where any Goods or products in respect of which title has not passed to the Customer may be stored (or in the case of any premises not under the control of the Customer, shall procure that such access is granted for the Supplier or its authorised representatives) for the purposes of inspecting those Goods or products and verifying the compliance by the

Customer with its obligations under Clause 8.3 and/or where the Customer's right of possession of those Goods or products has ended, for the purposes of recovering those Goods or products.

8.6 Save as expressly agreed otherwise by the Supplier in writing, all Intellectual Property Rights in or arising out of or in connection with the Goods and Services shall be owned by the Supplier.

9. LIMITATIONS AND EXCLUSIONS ON LIABILITY

9.1 Neither party seeks to limit or exclude in any way its liability for death or personal injury caused by negligence; for fraud or fraudulent misrepresentation; in respect of any breach of any condition implied under section 12 of the Sale of Goods Act 1979; and/or for any other matter or liability which cannot be lawfully limited or excluded. Each provision of each Contract shall be read as subject to this Clause 9.1 and no provision of any Contract is intended to nor shall be interpreted as seeking to limit or exclude any of the foregoing types of liability.

9.2 Subject at all times to Clause 9.3, the maximum liability of the Supplier to the Customer for all claims under any Contract howsoever arising (including under any indemnity) shall be limited in aggregate to the Price actually paid by the Customer to the Supplier for the Goods in question.

9.3 The Supplier shall not be liable (whether under the terms of any Contract under any indemnity or otherwise) for: loss of anticipated savings, product recall costs, damage to reputation, loss or damage to goodwill or brand, loss of contracts, loss of revenues, loss of use, special, incidental, indirect, punitive, exemplary or consequential loss or damages, loss of business, actual or anticipated revenues or profits, business interruption, loss of business information, data or other pecuniary loss howsoever arising including without limitation, the use of or inability to use the Goods however caused and regardless of liability, be it in contract, tort (including negligence) or otherwise, and even if the Supplier has been advised of the possibility of such damages.

9.4 The Supplier shall not be liable for any failure or delay in complying with any of its obligations under any Contract in the event that the failure or delay in question is attributable to any Force Majeure Event.

9.5 The Customer shall indemnify the Supplier on demand for all loss, damage, costs and expenses which may be suffered or incurred by the Supplier as a result of any third party making any claim against the Supplier in connection with the Supplier having followed or complied with any designs, specifications or other

instructions provided to the Supplier by or on the behalf of the Customer.

9.6 For the purpose of this Clause 9, the Supplier shall also mean any member of the Supplier's group of companies, its directors, employees, agents or contractors.

10. INSOLVENCY AND TERMINATION

10.1 If the Customer:

(a) becomes subject to any Insolvency Event;

(b) should the Supplier reasonably believe that the Customer is about to become subject to any Insolvency Event and notifies the Customer of such belief in writing; and/or

(c) should any amount due to be paid by the Customer to the Supplier under any Contract be overdue then the Supplier may in any such case (and without prejudice to any other rights or remedies available to it whether under any Contract or otherwise) suspend without liability any or all further deliveries of Goods or performance of any Services under any or all Contracts and/or terminate any outstanding Contracts in either case, without liability to the Customer.

10.2 The Supplier may terminate any or all outstanding Contracts in the event that the Customer is in breach of any of its obligations under any Contract and, in the case of a breach which is capable

of remedy, the Customer fails to remedy the same within 5 days of receipt of notice from the Supplier requesting it to do so.

10.3 Termination or expiry of any Contract shall not affect the continuing in force or coming into force of any provision of a Contract which, whether expressly or by implication is to survive termination or expiry. All sums payable to the Supplier under the Contract will become due immediately upon termination of the Contract despite any other provision.

11. 11 GENERAL

11.1 Any notices to be served on either party by the other shall be in writing and sent by pre-paid registered post to the registered office address of the other party or such other address as is notified in writing by that party from time to time. Such notice shall be deemed to have been received by the addressee 72 hours after posting provided applicable evidence of posting is retained and produced on request.

11.2 Whilst the parties may make operational communications via email, formal notice may not be served via email.

11.3 The parties are with respect to each other independent contractors and nothing in these Conditions or any Contract and no actions taken by the parties under any of these Conditions or any Contract shall be deemed to constitute any agency, partnership, association, joint venture or other co-operative enterprise between the parties.

11.4 Each Contract represents the entire agreement between the parties relating to the supply of the Goods or Services in question and supersedes all previous presentations made and/or agreements, negotiations and discussions between the parties relating to the same.

11.5 Save only to the extent as may be specifically provided for otherwise under these Conditions, no variation or amendment of any Contract shall be binding unless made in writing and signed by or on the behalf of each of the parties.

11.6 The Customer may not assign or transfer any of its rights and/or obligations under any Contract without the prior written consent of the Supplier. The Supplier may assign or transfer any or all of its rights and/or obligations under any Contract on notice to the Customer.

11.7 The Supplier may sub-contract the performance of any of its obligations under any Contract without the prior consent of the Customer or the need to give notice but shall remain primarily liable to the Customer for the acts and omissions of any of its sub-contractors as if those were the acts or omissions of the Supplier itself under the applicable Contract.

11.8 Any Supplier group companies shall be entitled to rely upon the benefit of any Contract and to enforce any Contract pursuant to the Contracts (Rights of Third Parties) Act 1999. Subject to the foregoing, a person who is not a Party to a Contract shall have no right to enforce any term of that Contract pursuant to the Contracts (Rights of Third Parties) Act 1999.

11.9 If any provision of these Conditions or of any Contract is declared by any judicial or other competent authority to be void, voidable, illegal or otherwise unenforceable, the remaining provisions shall remain in full force and effect.

11.10 The failure to exercise or delay in exercising any right or remedy under these Conditions or any Contract shall not be regarded as a waiver of such right or remedy, or a waiver of other rights or remedies. No single or partial exercise of any right or remedy under these Conditions or any Contract shall prevent any further exercise of the right or

remedy or any other right or remedy.

11.11 These Conditions and each Contract and any dispute or claim arising out of or in connection with either of those or their subject matter or formation (including any non-contractual disputes or claims) shall be governed by English law and, save in respect of the enforcement of any judgment, the parties agree to submit to the exclusive jurisdiction of the English courts.