

# Habasit Canada Limited

## Terms and Conditions of Sale

### 1. General:

These Terms and Conditions of Sale (the "Terms") govern Buyer's purchase of any product (the "Products") from Habasit Canada Limited ("Seller"). Buyer's purchase of the Products is limited to the terms and conditions contained herein. If these Terms are first tendered to Buyer before Buyer tenders a purchase order or similar document to Seller, these Terms are in lieu of any terms later submitted by Buyer and Seller rejects all additional or different terms and conditions of Buyer, whether confirmatory or otherwise. If Seller tenders these terms after the tender by Buyer of other terms, whether as part of a purchase order or otherwise, then Seller's acceptance of any offer by Buyer associated with Buyer's terms is expressly conditioned upon Buyer's acceptance of these Terms exclusively and to the exclusion of any proffered Buyer terms or conditions, regardless of whether these Terms contain any terms additional to, or different from, any terms proffered by Buyer. Buyer's performance, or acceptance of, or payment for, any products from Seller will constitute Buyer's acceptance of these Terms exclusively. If there is an executed written sales agreement or quotation in effect between the parties (a "Sales Agreement"), these Terms form a part thereof. Waiver by Seller of any breach, remedy or provision of these Terms shall not be construed to be a waiver of any succeeding breach or any other provision or legal remedy of Seller. The section headings of these Terms are for ease of reference only and shall not be admissible in any action to alter, modify or interpret the contents of any section hereof. The International Convention on the Sale of Products shall have no application to any sales of Products hereunder.

### 2. Price and Payment:

Net payment is due thirty (30) days upon shipment of the Products. Buyer shall pay the full amount of each invoice, without discount, adjustment or set-off, so that such payment is deposited into Seller's account within the agreed upon net payment days. If Buyer disputes the accuracy of any portion of any invoice, Buyer shall promptly notify Seller in writing, specifying the amount in dispute and the reasons therefor. If Buyer fails to notify Seller within ten (10) business days following the date of any invoice, any claims with respect to such invoice shall be deemed to be barred and to have been waived, and the invoice shall be deemed accepted in all respects by Buyer. In the event of a disputed invoice, Buyer shall nevertheless make timely payment of Seller's invoice, and the parties will promptly attempt to resolve the dispute, whereupon, if Seller determines that Buyer is entitled to a refund, Seller shall promptly issue a credit to Buyer or, at Seller's option, a check refunding any overpayment.

All prices are subject to change without notice and are therefore considered not binding. In the case of written quotations, such quotations shall be valid for a period of thirty (30) days. Unless otherwise agreed by the parties in writing, all Products are billed at the prices in effect at the time of shipment. Possession of certain price information by any representative or agent of Buyer is not to be construed as an offer to sell Buyer the Products at the particular price set forth therein.

Minimum order value is \$50.00. Orders with a total value less than \$50.00 will be invoiced at \$50.00.

If Buyer fails to comply with any of the stated payment terms, Seller, without limitation, may: (i) suspend deliveries until all payments are made in full; (ii) reclaim delivered Products; (iii) place Buyer on a cash-in-advance status; (iv) exercise rights of recoupment or setoff with respect to any sums due by Seller or its affiliates to Buyer or its affiliates; and/or (v) initiate legal action to recover sums due and owing. Seller shall have the right to collect interest on all past due amounts at the lower of (i) 1.5% per month (18% per annum) or (ii) the maximum non-usurious rate permitted by applicable law. In the event that Buyer tenders payment to Seller or its agents in a manner purported by Buyer to serve as payment in full of an invoice, Seller or its agent's acceptance of such payment shall not act as an accord and satisfaction and shall be without prejudice to Seller's right to pursue full payment of such invoice, in accordance with applicable law.

### 3. Taxes:

The price agreed upon for the Products is exclusive of taxes, duties and other charges that may be levied or due thereon, all of which shall be the responsibility of, and be borne by the Buyer, unless otherwise agreed to in writing by the parties. Buyer agrees to pay sales or use taxes or any other taxes, charges, duties or fees required to be paid by the Buyer or collected by Seller by reason of this sale, or to provide Seller with a valid tax exemption certificate; provided, that, Buyer shall not be responsible for any taxes imposed on, or with respect to, Seller's income, revenues, gross receipts, personnel or real or personal property or other assets. Buyer agrees to indemnify and hold Seller harmless from any liability and expense by reason of Buyer's failure to pay any required taxes, duties, charges or fees in respect to the Products sold hereunder.

### 4. Delivery, Title, Risk of Loss, and Shipping of Products:

Title to and risk of loss of the Products shall pass to Buyer upon tender of such Products to Buyer at Seller's factory or a common carrier. Unless otherwise agreed by Seller in writing, shipping terms shall be Ex Works (Incoterms 2010) Seller's factory or warehouse. Seller's weights shall govern provisional and final settlement. Any shipping date provided by Seller is the Seller's best estimate and will not operate to bind Seller to ship or make deliveries on such date. All shipments shall be subject to Seller's then current shipment terms, including its Freight Policies, Freight Damage Policies, and minimum order values. If Buyer specifies special routing involving any excess expense, those freight charges will be charged back in full to Buyer on Seller's invoice. No allowance is made for cartage. Seller reserves the right to ship from any stocking location in

Canada. Certain solutions require special Hazardous Goods approved packaging and handling. Costs for these services are additional and are not included under any freight allowance programs.

Buyer must thoroughly inspect the Products at the time of receipt for signs of damage, discrepancies or a shortage. Inspections of the Products at the time of delivery shall be commenced in the presence of the carrier's driver and Buyer shall note on the freight bill any shortages, discrepancies or damages of any Product received on the carrier's receipt. If concealed loss or damage is discovered, Buyer must report it to the carrier and to Seller within 15 days from the date of receipt.

Title to the Products and risk of loss of the Products shall pass from Seller to Buyer upon tender of the Products to the carrier for shipment. As collateral security for the payment of the purchase price of the Products, Buyer hereby grants to Seller lien on and security interest in and to all of the right, title and interest of Buyer in, to and under the Products, wherever located, as well as all proceeds (insurance proceeds) of the foregoing.

## **5. Cancellations and Returns:**

Return of any Product must be authorized by Seller. Seller will provide Buyer a Return Goods Authorization number for all authorized returns which must be shown on the returned package. Issuance of a RGA does not guarantee that credit will be applied to Buyer's account.

### 5.1 Returns for Warranty Reasons

Returns for warranty reasons are subject to the terms and conditions in section 7. Seller will solely determine if the Product qualifies as a return for warranty reasons. If Product does qualify for the Warranty, Seller will additionally pay all return freight costs to ship Product to Seller's facility.

### 5.2 Returns for Non-Warranty Reasons

Returns for non-warranty reasons are subject to the terms and conditions of this section (section 5). Buyer is responsible for return freight costs if Product is determined to have been returned for a non-warranty reason.

Returns for Fabricated belts, Assembled Belts, Machined Sprockets and Cut Pieces:

- Fabricated belts, assembled plastic modular belts, machined sprockets and cut to length fabric belting pieces are considered custom orders and may only be returned for warranty reasons, as listed under section 6, or for reasons due to errors caused by Seller. For all other reasons, sales are considered final and Products are non-returnable.

Returns for Coils (Non-Fabricated Belting Products):

- All standard coils, including coils sold "As Is", are returnable within 120 days of original shipment, but will be subject to a 25% restocking fee and such products must be in unaltered and in original condition.
- Coils that are "Made to Order", and indicated as such on the order acknowledgement, are returnable within 120 days of original shipment, but will be subject to a 50% restocking fee and such products must be in unaltered and in original condition.

Returns for Chain, Tools, Replacement Parts and other Non-Assembled Molded Products:

- Products are returnable within 120 days of original shipment, but will be subject to a 50% restocking fee and such products must be in unaltered and in original condition and packaging.

### 5.3 Order Cancellations and Order Modifications

All orders may be modified or cancelled without penalty if such notification is made within 4 (four) hours of order acknowledgement, or if Seller has not initiated any step in production or Product modification. For any order for fabricated belts or assembled belts which have been modified or customized in any way, the order is considered non-cancellable and the Buyer will be responsible for payment of the full price of the Product. To protect the Buyer from errors, Buyer is required to check its order acknowledgement for accuracy immediately upon receipt. Orders will be considered accurate and accepted by Buyer unless Buyer informs Seller of any discrepancy. Cancellation or suspension of orders by Buyer is subject to Seller's express written consent.

## **6. Contingencies:**

Seller expressly reserves the right to cancel the order in whole or in part in the event that Seller, in its sole discretion, determines that manufacturing the Products has been rendered difficult or impossible due to unforeseen causes. In such cases Seller shall not be liable to Buyer for any compensation relating to such cancellation or for subsequent delivery of the Products.

## **7. Warranty:**

**IT IS EXPRESSLY AGREED THAT THE FOLLOWING WARRANTY IS GIVEN IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, IS EXPRESSLY EXCLUDED. SELLER ASSUMES NO LIABILITY FOR DIRECT OR INDIRECT DAMAGES, LOST PROFITS, OR ANY OTHER CONSEQUENTIAL DAMAGES.**

Seller expressly warrants good title free from any lien, security interest or encumbrance of any kind, with respect to the Products purchased upon receipt of the Products and payment in full. Seller agrees to use its commercially reasonable efforts to comply with all material applicable laws and regulations including, but not limited to, those laws and regulations governing the manufacturing, packaging, labeling, shipping and safety of the Products. Seller further warrants that such Products will be free from significant defects in material and workmanship at the time of shipment and for the period of time defined herein by product grouping. Color variations along the length of the belt are not considered defects and are not covered by this Warranty.

- (i) For all belting products, sprockets, profiles, and other miscellaneous products used within a conveying or power transmission system: 1 (one) year from date of invoice
- (ii) For all tools, presses, and other workshop equipment: 3 (three) years from date of invoice

Seller shall not be liable for a breach of the warranty herein unless: (i) Buyer gives written notice of the defect, reasonably described, to Seller, within five (5) days of the time when Buyer discovers or ought to have discovered the defect; (ii) Seller is given a reasonable opportunity after receiving the notice to examine such Goods and Buyer (if requested to do so by Seller) returns such Goods to Seller's place of business at Seller's cost for the examination to take place there; and (iii) Seller reasonably verifies Buyer's claim that the goods are defective. With respect to any Goods that Seller determines are defective during the warranty period, Seller shall, in its sole discretion, either: (i) repair or replace such Goods (the defective part); or (ii) credit or refund the price of such Goods at the pro rata contract rate provided that, if Seller so requests, Buyer shall, at Seller's expense, return such Goods to Seller. Buyer agrees that such replacement or credit is the Buyer's sole and exclusive remedy and Seller's entire liability for any breach of the limited warranty herein.

The foregoing warranty does not apply where the Products have (a) been subjected to abuse, misuse, neglect, negligence, accident, improper testing, improper installation, improper storage, improper handling, abnormal physical stress, abnormal environmental conditions, or use contrary to any instructions issued by Seller; (b) been reconstructed, repaired or altered by anyone other than Seller or its authorized representatives; or (c) been used with any hardware or product that has not been previously approved in writing by Seller.

## **8. Claims:**

Any claims relating to the Products, for any reason, shall be made by Buyer in writing, with supporting documentation, to Seller within thirty (30) days after receipt. If a claim is not made within such time period, such claim shall be deemed to be barred and to have been waived, and the Products shall be deemed accepted. Any Products supplied by Seller that do not comply with the specifications in any material respect and that Buyer timely rejects shall be held for Seller's account for thirty (30) days after Buyer's notification to Seller of such noncompliance. During such thirty (30) day period, Seller shall make arrangements for the repair or replacement of such non-conforming Product(s). If Seller does not make such arrangements or otherwise furnish written instructions for disposition to Buyer within such thirty (30) day period, Buyer may dispose of the rejected Product(s) with no further obligation to Seller with respect to such non-conforming Product(s). In the event of a dispute regarding the quality of any Products delivered under this Contract, Seller shall be afforded the opportunity to investigate, identify the questioned Product(s), recommend curative action and take such other steps as may be reasonable to correct the alleged issue. If, after such investigation, the parties determine that such particular Product(s) does not conform to the specifications, Buyer's exclusive remedy shall be at Seller's option: (a) replacement by Seller of such non-conforming Product(s) and any costs associated with the shipping of any replacement Products to Seller; or (b) reimbursement by Seller to Buyer for amounts paid or credit to Buyer for amounts invoiced for such non-conforming Product(s) not to exceed the amount paid to Seller for the Product(s) for which the claim is made. At no time may Buyer withhold payment for invoices from other lots, shipments or orders due to a dispute on another lot, shipment or order of the Products.

## **9. Indemnification:**

Buyer agrees to indemnify, defend and hold harmless Seller and its parent company, affiliates and related companies, and its or their employees, officers, directors, shareholders, legal representatives, successors and assigns from and against any and all losses, suits, damages, liabilities, injuries, fines, penalties or expenses (including reasonable attorneys' fees actually incurred and fees and the costs of enforcing any right to indemnification) arising out of, resulting from, or relating to: (a) Buyer's material breach of any term or provision of this Agreement which remains uncured after the curative period described herein; or upon tender of the Products to the carrier for shipment, (b) any claim asserted by users of the Products or other third parties arising out of or resulting from the handling, storage, possession, sale or other use of the Products, except if caused solely by the gross negligence or intentional or willful misconduct by Seller or its agents or representatives, or (c) Buyer's negligence or willful misconduct. Buyer shall not enter into any settlement without Seller's prior written consent.

Seller shall not be liable for any personal injury or property damage incurred in connection with the handling, transportation, storage, possession, sale or other use of the Products by Buyer or any other person or party after delivery hereunder, unless such personal injury or property damage is due solely to the gross negligence or intentional or willful misconduct of Seller or its agents or representatives. Any action arising out of this Agreement must be commenced within one (1) year after the cause of action has accrued under applicable law.

#### **10. Excusable Performance:**

Seller is excused from performing any of its obligations under these Terms, any order or Sales Agreement if its performance is prevented, hindered or delayed by delays of suppliers, acts of God, nature, governments or their agencies, terrorism, war or sabotage, compliance in good faith with any applicable foreign or domestic governmental regulation or order (whether or not it proves to be invalid), fires, riots, inability to supply or obtain , products, materials, raw materials, supplies, fuel or utilities from normal sources of supply, labor disputes, work stoppages, lockouts, delays in transportation, earthquakes, floods, storms or other severe weather conditions, power shortages or power failures or any other events or circumstances beyond Seller's reasonable control (an "Event"). To the extent an Event delays Seller's performance, such performance shall be extended for as many days beyond the due date until the delay concludes; provided, however, if Seller is unable to perform any of its obligations under any order due to an Event for more than thirty (30) days, it may in its sole option terminate, without liability or penalty, any Sales Agreement, order or obligation in whole or in part. It is expressly understood that the Seller has available a limited source for the materials used by Seller in the manufacture of the Products. If there is an interference, limitation or cessation of any material from Seller's source of supply for any reason, Buyer agrees to relieve the Seller temporarily, proportionately, or permanently of liability under these Terms or any Sales Agreement or order, depending upon whether the interruption of the source of supply is a temporary interruption, a reduced delivery of materials, or a permanent cessation of supply. In the event there is a Product shortage pursuant to this section, Seller may ration and distribute such Products as it deems appropriate.

#### **11. Limitation of Liability and Assumption of Risk:**

IN NO EVENT WILL SELLER BE LIABLE TO BUYER FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, DELAY, OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION, LOSS OF DIRECT OR INDIRECT PROFITS, REVENUE, OR USE, WHETHER ARISING IN CONTRACT, TORT, OR OTHERWISE, EVEN IF BUYER OR ANY OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL SELLER'S AGGREGATE LIABILITY TO BUYER EXCEED ALL AMOUNTS ACTUALLY PAID BY BUYER TO SELLER. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF THE LIMITED REMEDY SET FORTH IN SECTION 6.

#### **12. Confidentiality:**

Buyer will not disclose to third persons any proprietary or confidential information of Seller concerning its business and operations, including without limitation, pricing information, for a period of five (5) years from the date such confidential information was learned or for confidential information meeting the definition of "trade secret" under applicable law, until such information is no longer a "trade secret." The obligations of confidentiality in this Section 12 do not apply to Confidential Information to the extent that the Confidential Information becomes readily ascertainable by proper means by the public other than through breach of this Section 12 by Buyer.

#### **13. Choice of Law:**

These Terms and all accepted orders shall be construed in accordance with the laws of the Province of Ontario, Canada without regard to its conflict of law principles. Buyer agrees that any and all disputes with Seller, including contract and tort claims, shall be resolved in the provincial and federal courts situated in Ontario, and that these courts shall have the exclusive jurisdiction over all such disputes and Buyer consents to the personal jurisdiction in these courts. Any action brought by Buyer against Seller shall be within one (1) year after the cause of action arises or it shall be deemed forever waived.