

HSM (UK) LIMITED (“HSM”) TERMS AND CONDITIONS OF SALE FOR BUSINESS CUSTOMERS
(valid as of October 1st 2007)

1. FORMATION AND INCORPORATION

- 1.1 Any contract (the “Contract”) between HSM and the person (the “Buyer”) whose order for goods or services is accepted by HSM will be upon these Terms and Conditions, to the exclusion of all other terms and conditions and all previous oral or written representations, including quotations and costs estimates and any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order or similar document, whether or not such document is referred to in the Contract. Variations to these Terms and Conditions will only be permitted in accordance with **Condition 13.5**.
- 1.2 Each order or acceptance of a quotation for goods to be purchased (“Goods”) or services to be performed (“Services”) will be deemed to be an offer by the Buyer to purchase Goods or Services upon these Terms and Conditions. The Contract is formed when the order is accepted by HSM by way of a written acknowledgement of order. No contract will come into existence until a written acknowledgement of order is issued by HSM. All orders must be on HSM’s standard order form.
- 1.3 Subject to **Condition 4.3**, the Buyer may not cancel the Contract. HSM may cancel the Contract at any time prior to delivery.

2. DESCRIPTION OF GOODS OR SERVICES

- 2.1 The quantity of the Goods will be as set out in HSM’s quotation or, if different, HSM’s order acknowledgement. The description of the Goods or Services will be as set out in HSM’s quotation and technical specifications authorised by HSM or, if different, HSM’s order acknowledgement (the “Description”). All public statements, recommendations and advertising issued by HSM and any descriptions or illustrations contained in HSM’s catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods or Services represented by or described in them. They will not form part of the Contract.
- 2.2 HSM may make any change to the specification, design, materials or finishes of the Goods or provision of the Services which are required to conform with any applicable safety, statutory or regulatory requirement or do not materially affect their quality or performance.

3. PRICE AND PAYMENT

- 3.1 Unless otherwise agreed, the price for the Goods or Services will be price set out in HSM’s published price list current at the date of acceptance of order. Unless otherwise stated, prices for Goods in HSM’s published price list are “ex works”. The price is exclusive of packaging, carriage, VAT and any other applicable sales tax or duty, which will be added to the sum in question.
- 3.2 The price is payable in Pounds Sterling and payment is due within 30 days of service of such invoice, or upon termination of the Contract, whichever occurs first.
- 3.3 All payments to be made by the Buyer under the Contract will be made in full without any set-off, restriction or condition and without any deduction for or on account of any counterclaim.
- 3.4 HSM may at its option apply any payment received in settlement of accounts that are the longest outstanding, and such payments shall be applied first to HSM’s costs, then to interest and then to the principal sum outstanding.
- 3.5 Time for payment by the Buyer is of the essence. If any sum payable under the Contract is not paid when due then, without prejudice to HSM’s other rights under the Contract, that sum will bear interest from the due date until payment is made in full, both before and after any judgment, at 4% per cent per annum over Lloyds TSB Bank plc base rate from time to time and HSM will be entitled to suspend deliveries of the Goods or performance of the Services until the outstanding amount has been received.

4. DELIVERY

- 4.1 Delivery of the Goods will be made ex-works as defined in INCOTERMS 2000. The Services will be performed at the place specified in the quotation or order acknowledgement (the “Service Point”).
- 4.2 Goods shall be deemed to be delivered: if the Contract is ex works, when HSM notifies the Buyer that the Goods are ready for collection; and if the parties agree that the Contract is not ex works, when HSM notifies the Buyer that the Goods have been despatched from its premises. If the Buyer fails to collect the Goods or provide any necessary documents within 5 days of delivery, the Goods will be deemed to have been delivered and HSM, without prejudice to its other rights, may at its option store or arrange for storage of the Goods until actual delivery or sale and charge the Buyer for all related costs and expenses and/or despatch the Goods to the Buyer and, in either case, invoice the Buyer for the Goods.
- 4.3 HSM will use reasonable endeavours to deliver the Goods or perform the Services within the time agreed when the Buyer places an order and, if no time is agreed, then within a reasonable time, but the time of delivery or performance will not be of the essence. If, despite those endeavours, HSM is unable for any reason to fulfil any delivery or performance on the specified date, HSM will be deemed not to be in breach of the Contract, nor (for the avoidance of doubt) will HSM have any liability to the Buyer for direct, indirect or consequential loss (all three of which terms includes, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss) howsoever caused (including as a result of negligence) by any delay or failure in delivery or performance except as set out in this condition. Any delay in delivery or performance will not entitle the Buyer to cancel the order unless and until the agreed time of delivery or

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performance has passed and the Buyer has given written notice to HSM requiring the delivery or performance to be made within a period of no less than 4 weeks and HSM has not fulfilled the delivery or performance within that period. If the Buyer cancels the order in accordance with this **Condition 4.3** then HSM will refund to the Buyer any sums which the Buyer has paid to HSM in respect of that order or part of the order which has been cancelled and the Buyer will be under no liability to make any further payments under **Condition 4** in respect of that order or part of the order which has been cancelled.

5. RISK/TITLE

- 5.1 Risk of damage to or loss of the Goods will pass to the Buyer on delivery (or deemed delivery in accordance with **Condition 4.2**).
- 5.2 Ownership of the Goods will not pass to the Buyer until HSM has received in full (in cash or cleared funds) all sums due to it in respect of: (1) the Goods; and (2) all other sums which are or which become due to HSM from the Buyer on any account.
- 5.3 Until ownership of the Goods has passed to the Buyer, the Buyer must: (1) hold the Goods on a fiduciary basis as HSM's bailee; (2) store the Goods separately from all other Goods of the Buyer or any third party in such a way that they remain readily identifiable as HSM's property; (3) not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and (4) maintain the Goods in satisfactory condition insured on HSM's behalf for their full price against all risks to the reasonable satisfaction of HSM, and will whenever requested by HSM produce a copy of the policy of insurance.
- 5.4 The Buyer may resell the Goods before ownership has passed to it solely on the following conditions: (1) any sale will be effected in the ordinary course of the Buyer's business at full market value and the Buyer will account to HSM accordingly; and (2) any such sale will be a sale of HSM's property on the Buyer's own behalf and the Buyer will deal as principal when making such a sale.
- 5.5 The Buyer's right to possession of the Goods will terminate immediately if any of the circumstances set out in **Condition 8.1** occur.
- 5.6 HSM will be entitled to recover payment for the Goods notwithstanding that title in any of the Goods has not passed from HSM.
- 5.7 The Buyer grants HSM, 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 Buyer's right to possession has terminated, to recover them.
- 5.8 Where HSM is unable to determine whether any Goods are the goods in respect of which the Buyer's right to possession has terminated, the Buyer will be deemed to have sold all goods of the kind sold by HSM to the Buyer in the order in which they were invoiced to the Buyer.
- 5.9 On termination of the Contract, howsoever caused, HSM's (but not the Buyer's) rights contained in this **Condition 5** will remain in effect.

6. LIABILITY OF HSM

- 6.1 HSM will, free of charge, within the warranty periods set out in **Condition 6.2** repair, or at its option replace, Goods that are proved to HSM's reasonable satisfaction to be defective or not to comply with the Description due to defects in material, workmanship or design (other than a design made, furnished or specified by the Buyer). This obligation will not apply to defects or damage caused by: (1) any improper alterations whatsoever, or misuse or unauthorised repair; (2) improper installation or connection; (3) improper use or handling (including where the Goods are not operated in surroundings protected from the weather, which protection must be put in place before delivery, installation and commissioning, and where the Goods are used by or made accessible to unauthorised persons and/or children); (4) non-compliance with any maintenance requirements; (5) non-compliance with any storage instructions; or (6) wear and tear. The obligation will also not extend to servicing, maintenance adjusting and re-adjusting work.
- 6.2 The warranty in **Condition 6.1** will not apply where the Buyer has failed to notify HSM in writing of any defect or suspected defect within 10 days of delivery where the defect should be apparent on reasonable inspection, or within 10 days of the same coming to the knowledge of the Buyer where the Buyer can demonstrate that the defect is not one which should be apparent on reasonable inspection, and in any event no later than the following periods from the date of delivery: (1) 2 years for HSM and Primo alternating current devices (230 V), and HSM and Primo cutting machines (the warranty obligation for shredstar models is limited to free delivery of replacement Goods following return of the defective Goods); (2) 10 years for solid steel cutting rollers by HSM and Primo alternating-current document shredders (230 V) (this warranty will not apply to document shredders with security level 5, HS Level 6 cutting unit and all shredstar models); (3) for other Goods, 1 year for use in single-shift operation and 6 months for use in multi-shift operation; (4) 6 months for used machines that are not older than 1 year (no warranty shall be provided for older machines).
- 6.3 Any Goods which have been replaced will belong to HSM. Any repaired or replacement Goods will be liable to repair or replacement under the terms specified in **Condition 6.1** and **6.2** for the unexpired portion of the warranty period.
- 6.4 In the event of any breach of HSM's express obligations under **Conditions 6.1, 6.2** and **6.3** above the remedies of the Buyer will be limited to damages.
- 6.5 HSM does not exclude its liability (if any) to the Buyer: (1) for breach of HSM's obligations arising under section 12 Sale of Goods Act 1979 or section 2 Sale and Supply of Goods and Services Act 1982; (2) for

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personal injury or death resulting from HSM’s negligence; (3) for any matter which it would be illegal for HSM to exclude (or to attempt to exclude) its liability; or (4) for fraud.

- 6.6 Except as provided in **Conditions 4.3** and **6.1** to **6.5**, HSM will be under no liability to the Buyer whatsoever (whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise) for any death, personal injury, damage or 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 like loss) howsoever caused arising out of or in connection with: (1) any of the Goods, or the manufacture or sale or supply, or failure or delay in supply, of the Goods by HSM or on the part of HSM’s employees, agents or sub-contractors; (2) any breach by HSM of any of the express or implied terms of the Contract; (3) any use made or resale by the Buyer of any of the Goods, or of any product incorporating any of the Goods; or (4) any statement made or not made, or advice given or not given, by or on behalf of HSM or otherwise under the Contract.
- 6.7 Except as set out in **Conditions 4.3**, and **6.1** to **6.5**, HSM hereby excludes to the fullest extent permissible in law, all conditions, warranties and stipulations, express (other than those set out in the Contract) or implied, statutory, customary or otherwise which, but for such exclusion, would or might subsist in favour of the Buyer.
- 6.8 The Buyer acknowledges that the above provisions of this **Condition 6** are reasonable and reflected in the price which would be higher without those provisions, and the Buyer will accept such risk and/or insure accordingly.
- 6.9 The Buyer agrees to indemnify, keep indemnified and hold harmless HSM from and against all third party claims, demands, proceedings and judgments (including expenses and legal costs (on a full indemnity basis)) (“Third Party Claims”) which HSM incurs or suffers as a consequence of a direct or indirect breach or negligent performance or failure or delay in performance by the Buyer of the terms of the Contract, including without limitation any Third Party Claims arising as a result of: (1) any improper alterations whatsoever, or misuse or unauthorised repair of the Goods; (2) improper installation or connection; (3) improper used or handling; and (4) failure by the Buyer to protect the Goods against access by children and unauthorised persons.

7. FORCE MAJEURE

- 7.1 HSM will not be liable to the Buyer for any failure or delay or for the consequences of any failure or delay in performance of the Contract, if it is due to any event beyond the reasonable control of HSM including, without limitation, acts of God, war, industrial disputes, protests, disruptions of operations or transport, fire, tempest, explosion, an act of terrorism and national emergencies (a “Force Majeure Event”) and whether such Force Majeure Event is suffered by HSM or its suppliers or sub-contractors.
- 7.2 HSM will be entitled to a reasonable extension of time for performing such obligations, to include a reasonable start-up time, provided that if the Force Majeure Event continues for more than 3 months, either party may terminate the Contract by serving notice in writing.

8. TERMINATION

- 8.1 HSM may by written notice terminate the Contract immediately if the Buyer is in material breach of the Contract or enters into insolvency, bankruptcy, any arrangement with its creditors or any other arrangement or situation which has a like effect. Failure to pay any sums due in accordance with **Condition 3.2** is a material breach of the terms of the Contract which is not capable of remedy.
- 8.2 The termination of the Contract howsoever arising is without prejudice to the rights, duties and liability of either the Buyer or HSM accrued prior to termination. The conditions which expressly or impliedly have effect after termination will continue to be in force notwithstanding termination.

9. INTELLECTUAL PROPERTY

- 9.1 No right or licence is granted to the Buyer in respect of any intellectual property rights of HSM (including without limitation any intellectual property rights in any quotations, specifications or illustrations and any intellectual property rights in the Goods or Services) except the right to use or re-sell the Goods or use the Services in the Buyer’s ordinary course of business. For the avoidance of doubt, HSM reserves all rights in any information (including any confidential information) supplied to the Buyer, including without limitation the right to apply for intellectual property rights in respect thereof.
- 9.2 The Buyer will not without HSM’s prior consent allow any trade marks of HSM or other words or marks applied to the Goods to be obliterated, obscured or omitted nor add any additional marks or words.
- 9.3 If the use of the Goods lead to an infringement of third party intellectual property rights on the market on which the Goods are intended for use or re-sale, HSM shall at its option obtain the right for the Buyer to use the Goods or shall modify the Goods to eliminate the infringement in a manner reasonably acceptable to the Buyer, and the Buyer shall co-operate fully in respect thereof. HSM shall indemnify the Buyer in respect of all court judgments or arbitral awards that the Buyer may incur or suffer arising as a result of a breach by HSM of a third party’s intellectual property rights.
- 9.4 The Buyer shall promptly notify HSM of any intellectual property infringements of which it becomes aware (whether of HSM’s rights or of a third party’s rights by HSM), and shall provide all reasonable information and assistance to HSM (at HSM’s cost) in pursuing or defending infringement proceedings.

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- 9.5 HSM shall not be liable to the Buyer under this **Condition 9** for infringement of a third party's intellectual property rights if the infringement arises as a result of unauthorised alterations or improper use by the Buyer of the Goods.
10. **SOFTWARE**
- 10.1 If HSM supplies software to the Buyer, the Buyer may use such software only in accordance with its intended use under the Contract and only on one system.
- 10.2 The Buyer shall obtain no other right or licence in respect of the software and the Buyer shall not, without HSM's prior written consent (which it may in its absolute discretion withhold): (1) sub-license the software; (2) reproduce, revise, translate the software or convert from object code to source code; or (3) remove or alter any manufacturer's details including any copyright marks or trademarks.
11. **CONFIDENTIALITY**
- 11.1 The Buyer will keep confidential any and all confidential information that it may acquire (including without limitation all specifications, quotations or illustrations).
- 11.2 The Buyer will not use the Confidential Information for any purpose other than to perform its obligations under the Contract. The Buyer will ensure that its officers and employees comply with the provisions of this **Condition 11**.
- 11.3 The obligations on the Buyer set out in **Condition 11.1** and **11.2** will not apply to any information which is publicly available or becomes publicly available through no act or omission of the Buyer or which the Buyer is required to disclose by order of a court of competent jurisdiction.
12. **GENERAL**
- 12.1 If the Buyer is domiciled or has its head office outside of the United Kingdom, it shall comply with all European Union legal requirements on turnover tax and shall, without limitation: (1) promptly notify its VAT registration number to HSM; (2) provide on request the necessary information regarding its business capacity, the use and transportation of the Goods delivered, and any information required under any statistical reporting obligation. The Buyer shall refund any expense (including processing fees) that HSM incurs as a result of incomplete or inaccurate information provided by the Purchaser relating to VAT, for which HSM shall not be liable.
- 12.2 Time for performance of all obligations of the Buyer is of the essence. Time for performance of all obligations of HSM is not of the essence.
- 12.3 Each right or remedy of HSM under the Contract is without prejudice to any other right or remedy of HSM whether under the Contract or not.
- 12.4 If any condition or part of the Contract is found by any court, tribunal, administrative body or authority of competent jurisdiction to be illegal, invalid or unenforceable then that provision will, to the extent required, be severed from the Contract and will be ineffective, without, as far as is possible, modifying any other provision or part of the Contract and this will not affect any other provisions of the Contract which will remain in full force and effect.
- 12.5 No failure or delay by HSM to exercise any right, power or remedy will operate as a waiver of it, nor will any partial exercise preclude any further exercise of the same, or of any other right, power or remedy.
- 12.6 Save as set out in the Contract, these Terms and Conditions may only be varied or amended in writing and signed by the managing director of HSM. The following Terms and Conditions may be varied in the Contract by a sales manager: **Conditions 3.1, 3.2 and 4.1**.
- 12.7 HSM may assign, delegate, license, hold on trust or sub-contract all or any part of its rights or obligations under the Contract.
- 12.8 The Contract is personal to the Buyer who may not assign, delegate, license, hold on trust or sub-contract all or any of its rights or obligations under the Contract without HSM's prior written consent.
- 12.9 The Contract and HSM's specification contains all the terms which HSM and the Buyer have agreed in relation to the Goods or Services and supersedes any prior written or oral agreements, representations or understandings between the parties relating thereto. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of HSM which is not set out in the Contract or HSM's specification. Nothing in this **Condition 9.8** will exclude any liability which one party would otherwise have to the other party in respect of any statements made fraudulently.
- 12.10 The parties to the Contract do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.
- 12.11 Any notice in connection with the Contract will be in writing addressed to the other party at its registered office, or principal place of business and will be delivered by hand, or first class or special delivery post. The notice will be deemed to have been duly served, if delivered by hand, when left at the proper address for service or if made by pre-paid, first class post or special delivery post, 48 hours after being posted.
- 12.12 The formation, existence, construction, performance, validity and all aspects whatsoever of the Contract or of any term of the Contract will be governed English law. The English courts will have non-exclusive jurisdiction to settle any dispute which may arise out of, or in connection with the Contract. The parties agree to submit to that jurisdiction.