

ebm-papst A&NZ Pty Ltd
TERMS & CONDITIONS of SALE
Version 3, date of publication 22/06/2010

1. The following are the terms and conditions of sale for the goods specified unless the sale is pursuant to a written quotation from the company in which case the terms and conditions appearing on the quotation form shall prevail over these terms and conditions where the same are inconsistent.
2. The word "ebm" shall refer to ebm-papst A&NZ Pty Ltd, ABN 33115927556. "Customer" shall refer to the person, persons, or corporation named on the face of the respective invoice, credit application or quotation.
3. The Customer shall become bound by the information on this document from the date of its first publication our website: www.ebmpapst.com.au.

4. Payment

- a. In respect of the Customer's obligation to make payment for the goods sold by ebm to the Customer, time shall be of the essence.
- b. Payment for goods sold by ebm to the Customer shall be made not later than 30 days after the statement date unless expressly agreed in writing otherwise.
- c. If a cheque (bank or otherwise) or other negotiable instrument is tendered as payment, payment shall be deemed to be made on the date on which such cheque or other negotiable instrument is negotiated and cleared by ebm's bankers.
- d. Any payments tendered by the Customer to ebm will in the ordinary course of business be applied to the Customer's account in accordance with the Customer's payment advice. However, ebm reserves the right to apply the payment against the Customer's account as it deems appropriate.

5. Retention of Title

- a. All goods delivered by ebm remain the property of ebm until all debts owing by the Customer to ebm have been paid, notwithstanding that payments may be made for the purpose of settlement of specifically designated claims. Until all ebm debts have been paid by the Customer, the Customer may sell the goods in the ordinary course of business, as its fiduciary and agent (but the Customer shall not hold itself out as such). The goods shall be at the risk of the Customer from the date of notification from ebm that the goods are ready for delivery and the Customer shall, at its cost, insure the same.
- b. These provisions apply notwithstanding any other arrangement under which ebm provides credit to the Customer. To the extent there is any inconsistency, these provisions prevail.
- c. ebm may recover the price of the goods by legal action and if the Customer is a corporation, ebm may file an application for the appointment of a Liquidator to the Customer, if the goods are not paid for in accordance with these terms and conditions, notwithstanding that property of the goods has not passed to the Customer.
- d. Until payment of all debts owing to ebm, ebm may without prejudice to any of its other rights, without prior notice, re-take possession of any goods which remain ebm's property (notwithstanding they are fixed to or incorporated with other goods) and for that purpose, by its servants and agents, enter upon the Customer's premises, or any other place where the goods may be, if:
 - i. there is any breach of any contract between ebm and the Customer; or
 - ii. the Customer commences to be wound up or is placed under official management, or receiver, or receiver and manager, or a voluntary administrator is appointed in respect of all or any part of the Customer's undertaking or property or an encumbrancer, by itself or by an agent, takes possession of all or any part of the Customer's undertaking or property; or
 - iii. the Customer parts with possession of the goods or any part of them otherwise than by way of the sale to a customer or client of the Customer in the ordinary course of its business.

6. Default

If the Customer defaults in making payment to ebm in accordance with these conditions or, (being a corporation) has a receiver, receiver and manager, administrator, liquidator (provisional or otherwise) or controller appointed, or, (being a natural person), commits an act of bankruptcy, dies or becomes of unsound mind or permanently disabled:-

- a. The whole of the sum then owing by the Customer to ebm for all goods sold by ebm to the Customer, shall immediately become due and payable and the Customer shall not then be entitled to purchase goods on credit from ebm unless ebm has agreed to same in writing, in which case, unless a contrary intention is shown in such agreement, the payment obligations contained in these conditions shall apply; and
- b. ebm may in its absolute discretion debit the Customer's account with:-
 - i. interest calculated on the portion of the Customer's account overdue from time to time at the rate of 2% per month from the date on which such default arose; and
 - ii. all collection fees in commissions, administrative costs, out-of-pocket expenses and legal costs (calculated on a solicitor/and own client basis) incurred by ebm as a direct or indirect consequence of such default.
- c. Upon retaking possession of goods, ebm shall within a reasonable time, inspect those goods and credit the Customer's account with such sum

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as ebm in its absolute discretion considers to be the fair and reasonable value of the said goods, after making due allowance for the price which those goods were sold to the Customer, the condition of the goods at the time of repossession and the costs incurred by ebm in connection with the repossession sorting and examination of the goods.

7. Warranties

- a. All other guarantees, warranties, or representations expressed or implied and whether arising by statute or otherwise are hereby expressly excluded (except to the extent only that such exclusion is prohibited by statute) and subject to the last mentioned exception these terms and conditions are the only terms and conditions of the contract between ebm and the customer. These terms and conditions cannot be altered except in writing by ebm's duly authorised representative.
- b. ebm assumes no responsibility for any loss or damage resulting from the handling, transportation, or use of the products by the purchaser. ebm warrants only that the products to be shipped hereunder will be free from defects in workmanship and material.
- c. ebm warrants its own manufactured products to be free of defects in workmanship and/or materials for a period of two (2) years from the date of delivery and/or all other products supplied by ebm, for a period of one (1) year from the date of delivery.

8. Claims

- a. ebm shall not be obligated to recognise nor shall it be responsible in law or in equity for any credit claims for short delivery or claims for damaged goods, unless the Customer has given written notice to ebm within seven days of the date on which the goods in question were delivered to or collected by the Customer. If a claim is made within this time limit, acknowledgment and payment of the claim shall be at the absolute discretion of ebm.
- b. Should the Customer consider that it has any claim it is entitled to make, having regard to these conditions, it shall:-
 - i. immediately upon becoming aware of the circumstances giving rise to such a claim, notify ebm of the nature of the claim; and
 - ii. allow ebm, its servants or agents full and free access to the goods in relation to which the claim is made (or the place where the goods have been applied or used) for the purpose of conducting such tests and examinations as ebm may in its absolute discretion consider necessary to determine whether the claim is justified or not.
- c. No return of goods will be accepted or credit issued for returned goods unless first agreed to in writing by ebm upon such terms as ebm thinks fit. If the goods are not manufactured by ebm or only partially manufactured by ebm return of the goods will only be accepted with the consent of the relevant supplier to ebm. A handling charge of 20% of the contract price may be imposed on all goods accepted for return and credit more than seven days after delivery. Goods shall be returned at the cost of the Customer and must be returned to the point of distribution or other point specified by ebm.
- d. The Customer acknowledges and agrees with ebm that:-
 - i. use of the goods supplied are beyond the control of ebm (except for loan stock and sample stock);
 - ii. any advice, recommendation, information or services provided by ebm, its employees, servants or agents regarding the goods sold and their use shall not be construed as contractual conditions or warranties; and
 - iii. ebm shall not be liable to the Customer for any loss or damage sustained by the Customer as a consequence of any incorrect advice, recommendation, information or services provided by ebm, its employees, servants or agents regarding the goods sold or the methods or conditions of application and use of the goods sold whether such loss was caused by any act of negligence, act of recklessness or any breach of any duty of care which may be owed to the Customer by ebm, its employees, servants or agents.
- e. The total liability of ebm, its employees, servants and agents is limited to one or the other of the following at the option of ebm:-
 - i. the replacement of the goods supplied or the supply of equivalent goods; or
 - ii. the payment of the cost of replacing the goods or of acquiring equivalent goods exclusive of freight;and does not extend to consequential loss or damage.

9. Orders

- a. Any quotation made by ebm to the Customer from time to time, shall not be construed or operated as an offer or obligation to sell but shall be an invitation to contract only, and ebm reserves the right to accept or reject in its absolute discretion any order which may be received by it from the Customer. Until such time as ebm accepts in writing a written order submitted by the Customer, it shall not be obliged to supply to the Customer the goods so ordered PROVIDED ALWAYS that if at any time the Customer defaults in respect of its payment obligations under these conditions, ebm may cancel or suspend any uncompleted order that has been accepted by ebm, without being liable to the Customer in any way whatsoever, and FURTHER PROVIDED that ebm shall not under any circumstances be responsible to the Customer for a breach of its obligation to supply goods pursuant to an order that it has accepted, which failure to and/or late supply is caused by matters beyond the reasonable control (including but without limiting the generality of the foregoing) Acts of God, acts of any Government, war or other hostility, national or international disasters, the elements, fire, explosion, power failure, equipment failure, strikes or lockouts, inability to obtain

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necessary supplies and the like and other 'force majeure'.

- b. Where a customer has placed an order for a future delivery date and for unforeseen reasons delivery cannot be taken up at the agreed date an extension of time agreed in writing may be granted by ebm. The maximum extension from original delivery date will be 90 days. If the dispatch date on an order is extended beyond 90 days, ebm is entitled to, and reserves the right, to unilaterally dispatch the order to the customer on an earlier date as a valid fulfillment of the customer's order.

10.Cancellation of Orders

- a. Orders for goods specifically acquired by ebm for the Customer shall not be cancelled by the Customer without the written consent of ebm.
- b. The cancellation of any order shall be on terms which indemnify ebm against all consequential losses.
- c. Reserve stock held by ebm specifically for the Customer shall be purchased by the customer within three (3) months of any change that affects future or ongoing supply of the product.

11.Prices

- a. The prices listed in the company's catalogue or price lists are subject to change without notice being given to the purchaser. All prices are ex-works unless otherwise agreed to in writing between the company and the purchaser.
- b. All quoted prices are exclusive of goods and services tax, unless shown otherwise, which shall be additional to the invoice price where applicable.

12.Waiver

- a. No waiver by ebm of any one breach of these conditions shall operate as a waiver of another breach of the same or of any other conditions of sale and the doing and/or omission of any act, matter or thing whatsoever by ebm, its servants or agents (which but for this clause ought or might amount to a waiver of ebm's rights in respect of any such breach or default), shall not operate nor be deemed to be a waiver in any way of ebm's rights and powers in respect of such breach or default any rule of law or equity to the contrary notwithstanding.
- b. These conditions and any warranties implied by law which are not capable of being excluded or modified, embody the entire understanding and the whole agreement between ebm and the Customer. Subject to express written terms to the contrary on any written Customer order and written acceptance of it (which shall only apply to that particular order), all previous negotiations, representations, warranties, arrangements and statements (if any) whether expressed or implied, including any collateral agreement or warranty between the Customer and ebm or the intentions of either of the parties otherwise, are excluded and cancelled.

13.Delivery

- a. Delivery of goods into the Customer's store shall be the responsibility of the Customer. Any goods delivered by ebm into the Customer's store shall be the subject of a separate agreement for delivery between the Customer and ebm. The Customer must take delivery of goods within seven days of notification that they are ready for delivery. In the event that the Customer fails to take delivery within seven days, the Customer shall pay to ebm all storage handling and other associated costs arising from the Customer's failure to take delivery.
- b. If after 30 days of such notification the Customer has not taken delivery of the goods ebm may at its absolute discretion cancel the order by giving written notice to the Customer and seek damages from the Customer for all losses it has and will sustain as a direct and indirect consequence of the Customer's failure to take delivery.
- c. In addition to a Customer's responsibility for freight terms agreed with ebm, the goods shall be at the Customer's risk from the date of notification from ebm that the goods are ready for delivery, and the Customer shall, at its cost, insure the same.
- d. The Customer shall be responsible for all hoisting facilities on delivery. The hoisted goods shall not be disassembled to suit the hoisting facilities provided unless ebm agrees, and in that event any increased costs incurred by ebm will be added to the contract price and the Customer agrees to pay such increased price.

14. Product Loans and Sample Products

- a. From time to time ebm may provide the Customer with loan stock (products). This will be noted on the Customer's invoice. This stock is provided to the Customer in order to enable the Customer to examine and trial the product, generally over a two-month period, following which the products must be returned to ebm.
 - i. Notwithstanding the above, ebm retains title to the product at all times.
 - ii. ebm reserves the right to request the return of loan stock from the Customer at any time. The Customer must return the loan stock within seven (7) days of any such request from ebm.

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- iii. The Customer shall return loan stock in near-new condition. Excessive damage or wear, or prolonged possession, may be charged to the Customer.
- b. From time to time ebm may provide the Customer with sample stock. This arrangement is different to that for loan stock. Instead, with sample stock the Customer owns the sample goods.
- c. For both loan stock and sample stock, these products are not to be sold, provided to or shown to any third party without ebm's express written permission.

15.Product Operation and Safety

Customers and installers are required to carefully read and apply our operating and/or safety instructions prior to any usage or application of our product to meet operating, safety and warranty requirements. If you have any queries regarding these instructions or require a copy of these instructions, please contact an ebm office for clarification prior to operating the product. These instructions can also be accessed via our website: www.ebmpapst.com/instructions

16.Privacy Act Authority

For the purposes of assessing the credit worthiness of the Customer from time to time and the collection of payments, the Customer hereby irrevocably authorises ebm, its servants and agents to make such enquiries as they deem necessary including but not limited to, making enquiries with and obtaining reports (as may be allowed by law) from persons nominated by the Customer as trade referees, the Customer's creditors, bankers and financiers, credit providers, mortgage and trade insurers and credit reporting agencies (hereinafter called "the information sources") and the Customer agrees and consents to the information sources providing to ebm such information as is requested by ebm and permitted to be given by law for these purposes. The Customer also consents to ebm disclosing the contents of any credit report or personal information to a credit reporting agency or commercial credit reporting agency for the purpose of that credit reporting agency creating or adding any credit information filed in relation to the Customer or any other person or business.