



CONDITIONS OF SALE

- 1(a) All quotations are issued, goods supplied and orders accepted by ebm-papst UK Ltd. ("the Company") subject to these conditions of sale which constitute the whole contract between the Customer and the Company.
- (b) The Company reserves the right to accept or reject an order in whole or in part and only orders confirmed by the Company on its printed Confirmation of Order shall bind the Company.
- (c) Any provision stipulation or condition in the Customer's order form or elsewhere which conflicts with it or in any way qualifies any of these Conditions shall have no effect and these conditions shall prevail.
2. Prices shall be quoted in pounds sterling, unless other currencies are stated. The Company reserves the right to charge the prices ruling in accordance with the relevant currency/pound sterling or exchange rate at the time of invoice settlement.
3. Any quotation made by the Company shall be valid for 30 days, after the expiry of which it may be altered or withdrawn.
4. Prices quoted are exclusive of VAT.
5. Terms of payment shall be within 30 days of date of invoice with no deduction or set-off.
6. Unless otherwise agreed in writing delivery charges and packing shall be in addition to prices quoted; the Company uses disposable packaging, calculated at minimum price and not to be returned.
7. Delivery shall be effected when the goods shall be handed over to the Customer, his authorised agent or any person present on the Customer's premises who the person effecting delivery reasonably assumes to be so authorised or, in the event of delivery being undertaken by an independent contractor, when the goods shall be handed over to the contractor or his authorised agent.
8. Delivery dates shall be subject to material and delivery facilities being available. Whilst every effort will be made to keep to delivery dates, in the event of delayed despatch the Company shall not accept cancellation until at least 3 months have passed since the agreed date of delivery, nor shall the Company be responsible for any claims arising from delayed delivery.
9. The Company reserves the right to decrease the quantities delivered in reasonable proportion to the quantity ordered.
10. In the event of any goods supplied by the Company being found to be defective the Company shall subject as hereinafter provided be responsible only for the repair or (at its discretion) replacement of the goods free of charge for labour and materials. All other claims (including claims for consequential loss but excluding claims for death or personal injury) relating to any express or implied warranties as to merchantable quality and fitness for purpose of the goods shall be excluded. The liability of the Company hereunder shall cease after expiry of 12 months from the date of delivery and shall in any event only arise on condition that:
 - (a) The goods shall not have been overloaded nor had any improper use made of them.
 - (b) The goods shall have been installed in accordance with the wiring and installation instructions provided and the Company shall have been given access to verify the same.
 - (c) The correct electrical supply specified shall have been used.
 - (d) No repairs shall have been made to the goods otherwise than by the Company or its authorised agent.
 - (e) The goods shall have been returned, carriage paid, to the Company or its appointed distributor.
11. Any claims regarding quantities and/or loss and/or damage in transit shall only be considered if made within seven days from receipt of the goods or seven days of receipt of the invoice or within twenty-one days of the date on which the goods should have been delivered, whichever is the soonest. In the case of damage in transit and on specific instructions from the Company, the Customer shall return the goods securely packed in the original packing carriage paid quoting the Customer's advice note, giving the reason for return, the number and date of the Company's invoice.
- 12(a) The goods shall be at the Customer's risk as from delivery.
- (b) In spite of delivery having been made, property in the goods shall not pass from the Company until:
 - (i) The Customer shall have paid the purchase price plus VAT in full; and
 - (ii) No other sums whatever shall be due from the Customer to the Company
- (c) Until property in the goods passes to the Customer in accordance with sub-paragraph (b), the Customer shall hold the goods and each of them on a fiduciary basis as bailee for the Company. The Customer shall store the goods (at no cost to the Company) separately from all other goods in its possession and marked in such a way that they are clearly identified as the Company's property
- (d) Notwithstanding that the goods (or any of them) remain the property of the Company, the Customer may sell or use the goods in the ordinary course of the Customer's business at full market value for the account of the Company. Any such sale or dealing shall be a sale or use of the Company's property by the Customer on the Customer's own behalf and the Customer shall deal as principal when making such sales or dealings
- (e) Until property in the goods passes from the Company, the entire proceeds of any sale or otherwise of the goods by the Customer shall be held in trust for the Company, and the Customer shall account for the proceeds to the Company on demand. In particular, but without prejudice to the generality of the foregoing, the Customer shall pay such proceeds of sale into a separate account, or otherwise shall ensure that all such proceeds of sale are kept by or on behalf of the Customer in a separate and identifiable form, and shall not pay any such proceeds of sale into any bank account which is overdrawn. Further, forthwith upon receipt of the proceeds of sale the Customer shall pay to the Company any sums outstanding to the Company and shall not use or deal with the proceeds of sale in any way whatsoever until such sums have been paid.
- (f) If, before property in the goods passes to the Customer in accordance with sub-paragraph (b) above, the goods or any of them are incorporated into any new product, the Company shall have a proprietary right as an owner in common of any such new product, ownership being shared with the owners of all goods contributing to the new product and in proportion to the contribution of each, by value of goods supplied, to the total value of the new product. Sub-paragraph (e) shall apply to the proceeds of sale of any new product.
- (g) The Company shall be entitled to recover the purchase price plus VAT notwithstanding that property in any of the goods has not passed from the Company
- (h) Until such time as property in the goods passes from the Company, the Customer shall upon request deliver up such of the goods as have not ceased to be in existence or resold to the Company. If the Customer fails to do so, the Company may enter upon any premises owned, occupied or controlled by the Customer where the goods are situated and repossess the goods. On the making of such a request, the rights of the Customer under sub-paragraph (d) shall cease.
- (i) The Customer shall not pledge or in any way charge by way of security for any indebtedness any of the goods which are the property of the Company. Without prejudice to the other rights of the Company, if the Customer does so all sums whatever owing by the Customer to the Company shall forthwith become due and payable.
- (j) The Customer shall insure and keep insured the goods to the full purchase price against "all risks" to the reasonable satisfaction of the Company until the date that property in the goods passes from the Company, and shall whenever requested by the Company produce a copy of the policy of insurance. Without prejudice to the other rights of the Company, if the Customer fails to do so all sums whatever owing by the Customer to the Company shall forthwith become due and payable. Until such time as property in the goods passes from the Company, in the event of the Customer making any claim under the aforesaid insurance, the Customer shall receive the proceeds of such insurance on behalf of the Company as trustee for the Company and forthwith account to the Company for such proceeds.
13. If the Customer is notified that any goods are due and ready for delivery and shall not thereupon accept delivery of the same, the goods shall (without prejudice to any other consequences) be stored at the Customer's risk and expense at a reasonable charge but for the purposes of determining the due dates of payment and the passing of the risk the goods shall be considered to have been delivered when first tendered.
14. The goods supplied shall at all times only be used by the Customer strictly in accordance with the relevant Operating Instructions Manual for such product which is published and can be downloaded from the internet at <http://www.ebmpapst.com/en/products/operatinginstructions/operatinginstructions.php>. Liability for a specified purpose or use or specified suitably shall only be assumed to the extent expressly agreed in writing by the Company. In all other respects the suitability and application risk is the sole responsibility of the Customer. The Customer guarantees compliance with the basic technical conditions and requirements specified in the published documentation and/or supplementary documentation supplied. Any other use or application of the goods is prohibited. The Customer shall impose the same conditions upon and customer/end-user of the goods.
15. Unless alternative arrangements have been agreed in writing between the Company and the Customer, where the goods supplied by the Company are products within the scope of the Waste Electrical and Electronic Equipment Directive 2002/96/EC ("WEEE"), it shall be the Customer's responsibility to undertake and finance the cost of collection, treatment, recovery and environmentally sound disposal of such goods in full compliance with WEEE, and the Customer shall indemnify the Company against all actions, proceedings, costs, claims and expenses suffered or incurred by the Company through any breach or non-compliance or non-performance by the Customer in relation to the same.
16. Where the goods supplied by the Company are products within the scope of WEEE, the Company shall only accept return of such goods from the Customer in compliance with these Conditions of Sale, carriage paid, subject to the goods being clean and free of hazardous material in accordance with the requirements of WEEE.
17. Each delivery shall operate as a separate contract. Should the Customer fail to pay on the due date the price of any delivery, the Company shall be entitled to suspend further deliveries until further payment or to treat the contract as wrongfully repudiated by the Customer without prejudice to its right to payment for any goods delivered and to damages for the Customer's breach of contract. The Company shall be entitled to interest on any unpaid purchase price from due dates until payment at the rate of 3% over the NatWest plc base lending rate prevailing during such period, subject to a minimum interest rate of 8% per annum, such interest shall accrue on a daily basis from the due date until the date of actual payment whether before or after judgment.
18. In the event of the Customer being an individual or a firm becoming insolvent or having a receiving order made against him or being a limited company having a receiver appointed or going into liquidation (other than for the purpose of reconstruction or amalgamation of a solvent company) the contract shall forthwith determine without prejudice to the Company's right to payment of the price of delivered goods and any damage it might suffer in consequence of such determination and of its rights under Condition 12 hereof.
19. The rights of the Company shall not be prejudiced or restricted by any indulgence or forbearance extended to the Customer and no waiver of any breach shall operate as a waiver of any subsequent breach.
20. The Company shall not be responsible for any loss or damage or delay caused directly or indirectly by strike, lock-out, war, civil commotion, force majeure or other interference with the carrying out of an order for the supply of goods or for repairs or other work and the cost of any repairs or replacement which may be rendered necessary by any such matters shall be borne by the Customer.
21. If the Company culpably fails to fulfil its basic contractual obligations (i.e. obligations that make the proper performance of contract possible and are usually subject to Customer's confidence) within the deadline, compensation shall be restricted to typically foreseeable damage. Incidentally, subject to clause 8 compensation for damages caused by delay is limited to 3% of the value of goods delivered for each completed week and a maximum of 15% of the value of goods delivered.
22. It is not intended that any term of the contract between the parties shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
23. The contract between the Company and the Customer shall be subject to English law and the Company and the Customer irrevocably submit to the exclusive jurisdiction of the English Courts.