

STANDARD TERMS AND CONDITIONS OF SALE

1. PARTIES

The Parties hereto shall be as follows:

- 1.1. ebm-papst South Africa (Proprietary) Limited, a private company with registration number 2005/038971/07 Herein after referred to as "ebm-papst")
- 1.2. Any person or entity contracting with ebm-papst either by way of cash sale or sale on credit, and shall, where applicable, include the party described adjacent to the words "Registered Name of the Applicant" in the case of the credit application document or "Sold to" in the case of a tax invoice or proof of delivery note, as the case may be, (hereinafter referred to as "the Customer").

2. SCOPE

- 2.1. The sale of any goods, or the rendering of any service, by ebm-papst to the Customer shall be subject to the terms and conditions hereinafter set out and no other terms and conditions inconsistent with those contained herein shall be applicable to or binding on ebm-papst unless agreed to in writing by ebm-papst.

3. ORDER

- 3.1. No order addressed by the customer, to ebm-papst shall result in an agreement between the parties until accepted by ebm-papst, which acceptance shall be subject to the terms and conditions herein contained.
- 3.2. After acceptance of the order by ebm-papst, the Customer shall not be entitled for any reason whatsoever to cancel or vary such order without ebm-papst prior written consent.
- 3.3. In the event the Customer's order containing terms and/or conditions then this agreement shall take precedence

4. DELIVERY

- 4.1. ebm-papst shall, in its discretion, be entitled (but not obliged) to deliver the goods to the Customer's place of business as set out overleaf.
- 4.2. ebm-papst will attempt to effect delivery of the goods ordered at the given date but shall be entitled in its sole discretion to make delivery of the goods ordered in such quantities and on such dates as it may decide.
- 4.3. Delivery and installation times furnished by ebm-papst are merely estimates and are not binding on ebm-papst, nor shall ebm-papst be liable for any damages whatsoever arising from late delivery.
- 4.4. ebm-papst shall be entitled to invoice each delivery actually made separately.
- 4.5. It is hereby agreed that ebm-papst may, in its sole discretion, engage a third party on its behalf to transport all goods to the customer on such terms as it deems fit.
- 4.6. In the event of the Customer transporting the goods then ebm-papst is hereby indemnified against any claim of whatsoever nature that may arise during the course of such transportation.

ACKNOWLEDGEMENT OF RECEIPT

- 4.7. The Customer hereby undertakes to acknowledge receipt of any goods delivered to it by signature of a delivery note by a person duly appointed thereto and shall thereby warrant that the goods so received represent the goods reflected on the tax invoice, at the price agreed to by the parties in terms of clause 7 hereto, that the goods were delivered on the date reflected on the tax invoice and that the goods were inspected and found to conform in all material respects to the quality and quantity ordered, and are free from any defects.
- 4.8. No claim in respect of short deliveries will be entertained by ebm-papst unless ebm-papst is notified in writing of such short delivery on the document presented to the Customer with the goods for signature (i.e. the proof of delivery document) and such document is returned to ebm-papst at the time of delivery.
- 4.9. Where the Customer fails to acknowledge receipt as undertaken in clause 5.1 hereto, then any delivery note held by ebm-papst, whether, copy or original, signed by an unauthorized person or unsigned, shall be prima facie evidence that delivery was made to the Customer and that the Customer received the goods therein stated in good order.

5. RESERVATION OF OWNERSHIP AND PASSING OF RISK

- 5.1. ebm-papst reserves the right of ownership in respect of any goods delivered to the Customer until such time as the purchase price is paid in full.
- 5.2. The risk of damage to, or destruction of goods is passed to the Customer upon the Customer, or the Customer's nominated representative, accepting delivery thereof or upon signature of the delivery note by the Customer or its representative.
- 5.3. In the event that the Customer should sell any goods delivered to it by ebm-papst, ebm-papst reserves the right to inform the purchaser thereof that such goods are subject to its right of ownership.

6. PRICING

- 6.1. All goods delivered to the Customer will be invoiced at the rate of ebm-papst's prevailing prices charged by ebm-papst from time to time in respect of customers such as the Customer, on the date of delivery, as published in its ruling price list.
- 6.2. Prices are subject to change without prior notice.
- 6.3. Any quotes furnished by ebm-papst which are:
 - I. based on the current exchange rate shall be subject to increase if, prior to delivery, the exchange rate should increase, the amount of such increase in price shall be appropriate to the exchange fluctuation; or
 - II. subject to any import duties, taxes, levies or charges shall be increased by the amount thereof unless such tax, levy or charge appears on the original quotation.

7. PAYMENT

- 7.1. Unless otherwise agreed in writing, payment in full without deduction or set-off in respect of any goods sold or services delivered shall become due and payable within 30 (thirty) days from date of statement.
 - 7.2. Upon the Customer's failure to comply with the conditions of payment, ebm-papst reserves the right to:
 - I. Suspend any or all further deliveries; and/or
 - II. To require cash payments prior to delivery; and/or
 - III. Cancel any orders placed upon it; and/or
 - 7.3. To exercise its rights as set out more fully in clause 13. Hereto.
- In addition to the foregoing, should any payment not be received promptly when due, ebm-papst shall be entitled to declare any discount it may have afforded the Customer to be forfeit and accordingly require payment of the full purchase price at that time prevailing.

8. CERTIFICATE OF BALANCE

- 8.1. Any certificate under the hand of any manager or director of ebm-papst as to the existence or amount of the Customer's indebtedness to ebm-papst at any time, as to the fact that such amount is due and payable, the amount of interest accrued thereon, and as to any other act, matter or thing relating to the Customer's indebtedness to ebm-papst, shall be prima facie evidence of the contents and correctness thereof and of the amount of the Customer's indebtedness for the purposes of provisional sentence, summary judgment or any other proceedings against the customer in any competent court, and it shall be valid as a liquid document for such purposes.
- 8.2. It shall not be necessary to prove the appointment of the person signing such certificate and such certificates shall be binding on the Customer and shall be deemed to be sufficient particularly for the purposes of any action or other proceedings instituted by ebm-papst against the Customer.

9. GUARANTEES AND WARRANTIES

- 9.1. ebm-papst will make good by repair or at its own option by the supply of a replacement, any defects which, under proper and normal use, appear in the goods within a period of twelve calendar months after the goods have been delivered and have arisen solely from faulty design, materials or workmanship. All other guarantees and warranties whether statutory, common law or implied are hereby specifically excluded
- 9.2. It is the duty of the Customer to return any defective goods to the premises of ebm-papst or ebm-papst's nominee at the Customer's own cost.
- 9.3. Any item delivered to ebm-papst will form the object of a pledge in favour of ebm-papst for present and past debts of the Customer.

STANDARD TERMS AND CONDITIONS OF SALE continued

9.4. All guarantees are immediately null and void should any equipment be tampered with or should the seals on equipment be broken by anyone other than the organization or its appointed nominees, or should the goods be operated outside the manufacturer's specifications.

9.5. Unless guarantee claims are supported by the original tax invoice together with the goods in the original packaging, complete with all accessories and manuals, such claim will be invalid.

9.6. ebm-papst's agents and employees has no authority to give warranties or to make any representations on its behalf, save for those stated herein, and ebm-papst shall not be liable for any warranties or representations so made by its agents or employees.

9.7. It is the sole responsibility of the Customer to determine that the goods or services ordered are suitable for the purpose of intended use, and ebm-papst accepts no responsibility whatsoever from any loss arising should the goods not be so suited. ebm-papst shall not be obliged under any circumstances to accept the return of goods or to afford a credit in respect thereof, unless ebm-papst consents thereto in writing, which consent it may withhold arbitrarily without incurring any liability.

10. CONSEQUENTIAL DAMAGES

10.1. Under no circumstances whatsoever will ebm-papst be liable for any damages including consequential or indirect damages or loss of profit or for any delictual liability of any nature whatsoever suffered by the Customer as a consequence of purchasing, using, selling or otherwise dealing with the goods.

10.2. Under no circumstances whatsoever will ebm-papst be liable for any damage arising from misuse or abuse of the goods.

11. RETURNS

11.1. Should ebm-papst agree to accept the return of any goods for credit, which consent it may arbitrarily withhold, the Customer shall be liable to pay to ebm-papst a handling charge of 15% on the invoice price of the goods so returned.

11.2. ebm-papst shall not entertain a request for the return of any goods unless such goods are in the original new condition supplied together with original packaging, complete with all accessories and manuals, and supported by the original tax invoice.

11.3. After the lapse of a period of 14 (fourteen) days from date of delivery, ebm-papst shall not accept the return of any goods under any circumstances whatsoever.

12. BREACH

12.1. Should any term of this agreement be breached whatsoever, all of which are deemed to be material, then ebm-papst shall be entitled immediately and without notice, in its discretion, to either:

I. Cancel the agreement and take possession of any such goods as it may deem appropriate delivered to the Customer which have not been paid for in full and forthwith proceed for payment of the full purchase price for all goods not so recovered by ebm-papst as well as for any damages which ebm-papst may incur or have incurred. Or
II. Elect to enforce the agreement without prejudice to any other rights it may have in terms of this agreement or at law.

12.2. The Customer furthermore agrees to make payment of any loss, expense (including attorney and own client costs which shall include counsel's fees, VAT and collection commission) and/or damages which may be Incurred by ebm-papst as a result of the Customer's breach.

12.3. The Customer consents to the jurisdiction of the Magistrate's Court notwithstanding that the amount of the claim by ebm-papst exceeds the normal jurisdiction of the Magistrate's Court. ebm-papst shall in its discretion be entitled to proceed against the Customer in any other court of competent jurisdiction, the forgoing notwithstanding.

12.4. The Customer undertakes to inform ebm-papst in writing of any change of director, member, shareholder, owner or partner or selling or alienating the Customer business and failure to do so will constitute a material breach of the Agreement.

13. DEPOSIT ON GOODS

13.1. ebm-papst reserves the right to require the Customer to furnish to it a deposit and/or acceptable guarantee for payment, the amount of which ebm-papst shall be entitled to set in its discretion.

13.2. Any deposit paid to ebm-papst shall be forfeit, in its entirety, should the customer at any time cancel the order, which cancellation shall be effective only in the event of ebm-papst consenting thereto in writing

14. DOMICILIUM CITANDI ET EXECUTANDI

14.1. The Customer hereby chooses the address set out in the application form as its *domicilium citandi* et *executandi* at which all notices, legal processes and other communications must be delivered for the purpose of these Conditions.

14.2. Any notice or communication required or permitted to be given in terms of these Conditions shall be valid and effective only if in writing, but it shall be competent to give notice by email or fax.

15. CONSENT TO TRADE REFERENCES

15.1. The Customer hereby furnishes its irrevocable consent to ebm-papst contacting either its existing or past trade creditors, the bank with which it conducts its business account or any other person who may have information as to the credit worthiness of the Customer, both prior to this agreement being entered into and at any time during the currency thereof, and further consents to such persons furnishing to ebm-papst any information which may be of relevance to the credit worthiness of the Customer.

16. ALLOCATION OF PAYMENTS

16.1. The Customer irrevocably authorises ebm-papst to apply any monies received by ebm-papst from the Customer against the indebtedness of the Customer to ebm-papst in such manner as ebm-papst in its discretion may deem fit.

17. GENERAL TERMS AND CONDITIONS

17.1. This agreement embodies the entire agreement between the parties

17.2. No alteration, variation or consensual cancellation of this agreement or any of its terms shall be of any effect unless it is recorded in writing and signed by ebm-papst and the Customer.

17.3. No relaxation which ebm-papst may allow the Customer or the signatory at any time in regard to the carrying out of this agreement shall prejudice any of ebm-papst's rights under this agreement in any manner whatsoever nor shall it be regarded as a waiver of any of those rights or a novation.

17.4. The invalidity of any part of these terms and conditions will not affect the validity of any other part of this agreement, each clause in this agreement being severable from the rest.

17.5. Any document, other than a statement of account referred to in clause 8. 2, will be deemed duly received by the Customer within:

I. 7 working days of prepaid registered mail to any of the Customer's business or postal addresses to the address where business is executed by the Customer or to the personal address of any director, member or owner of the Customer; or

II. within 24 hours of being faxed to any of the Customer's fax numbers or any director's, member's or owner's fax numbers;

III. on being delivered by hand to the Customer or any director, member or owner of the Customer;

IV. within 48 hours if sent by overnight courier; or Within 24 hours of being telefaxed to the Customer's telefax number or email.