

Terms and Conditions

1 Parties

In these Terms:

- (a) “**you**” or “**your**” or “**Customer**” is a reference to the party agreeing to these Terms as a customer of ebm; and
- (b) “**we**”, “**us**”, “**our**” or “**ebm**” is a reference to ebm-papst A&NZ Pty Ltd, ABN 33 115 927 556.

2 Governing Terms and Conditions

- (a) Subject to clause 2(d), these terms and conditions (“**Terms**”) apply to the sale of goods by us to you and any other contracts, engagements or work that we undertake for you and are incorporated into each order for goods made by you.
- (b) These Terms prevail over any terms and conditions in your documents (including, without limitation, any terms and conditions printed on a quotation or order that you give or send to us at any time). Any additional terms and conditions in respect of the goods will only apply to the extent that they are expressly accepted in writing by us.
- (c) When you place an order for goods with us, accept delivery of goods, make any payment for any goods, visit our website at www.ebmpapst.com.au or www.ebmpapst.co.nz or otherwise comply with these Terms, you are taken to have accepted the Terms.
- (d) Where a sale of goods by us to you is pursuant to a written quotation from ebm which includes terms and conditions appearing on the quotation form, those terms and conditions prevail over these Terms where these Terms are inconsistent with the terms and conditions appearing on a written quotation given by ebm to you.

3 Quotations, Orders and Price

3.1 Non-exclusive

- (a) You acknowledge that you are under no obligation to place an order or any number of orders over a particular period or at all with us.

3.2 Quotations

- (a) If we give you a quotation, we are not making you an offer. We may withdraw or alter the quotation by giving you written notice. If we do not withdraw the quotation, it is valid for the period stated on the quotation. If no period is stated on the quotation, it is valid for 30 days from the date the quotation was given.

3.3 Orders

- (a) You must order goods by submitting a written order to us in the manner prescribed by us from time to time, but such order must specify:
 - (i) the date the order is placed;
 - (ii) the goods required;
 - (iii) the quantity of the goods ordered;
 - (iv) the required date for delivery;
 - (v) delivery address (if applicable); and
 - (vi) any other relevant instructions or information.
- (b) We will be deemed to have accepted an order if we do not reject the order in whole or in part within 7 business days of the order being received by us.

3.4 Price

- (a) Unless otherwise specified or agreed in writing, all prices in our price list and quoted are ex-works (EXW) based on delivery by sea freight to Melbourne and do not include GST, which is

payable in addition to the invoice price where applicable.

3.5 Prices changes

- (a) Any price list circulated or price lists are subject to change. When we make changes to the price of goods we will use reasonable endeavours to notify you of the change in price including by email (if a valid email address is held).
- (b) The updated price for goods will take effect 30 days after we have notified you (**Effective Date**). It is your responsibility to check the price each time before you make an order and any subsequent order placed by you after the Effective Date will be deemed as an acceptance of the revised price.
- (c) If we change the price for goods, this price change will affect orders already in progress at the time of the Effective Date. For a customer that has already entered these Terms, the varied price will also apply to all orders submitted after the Effective Date.
- (d) If you do not wish to continue with an order because we have changed the price for the goods, you must notify us that you do not wish to continue with an order and we will cancel your order. If you cancel your order pursuant to this clause 3.5(d):
 - (i) within 30 days from the Effective Date, your order will be cancelled at no cost to you; or
 - (ii) after 30 days from the Effective Date, the provisions of clause 4.2 ("Cancellation of an order") below will apply including the costs set out in clause 4.2(d).

Refer to section 27.3 ("Notices") below in respect of how to contact us to cancel an order.

- (e) Any price concession or discount we provide you is conditional on your full compliance with these Terms.

4 Changing or cancellation of an order

4.1 Changing to an order

- (a) Either party may notify the other at any time before pre-production of the goods of any anticipated or requested change in the nature, scope or timing of the provision of goods under these Terms, including without limitation any anticipated or requested:
 - (i) increase, decrease or omit of any part of the goods; or
 - (ii) change to the character or content of any part of the goods.
- (b) Where either party gives the other a notice to vary the goods under clause 4.1(a), the parties agree to negotiate in good faith a variation of the price and the time for completion of the varied goods. However, no variation to the goods or the relevant order will take effect unless agreed by ebm and you in writing.
- (c) **If variation not agreed fees will still apply:** Nothing in clauses 4.1(a) to 4.1(b) (inclusive) removes or reduces your liability to pay or reimburse us for any goods produced or delivered, or for any expenses reasonably incurred by us in expectation of producing or delivering goods as previously directed and prior to the date of delivery of a notice of variation pursuant to clause 4.1(a) if a variation is not agreed between the parties.

4.2 Cancellation of an order

- (a) Subject to clauses 3.5(d) and 27.1(e), you must provide us with 200 days written notice if you wish to cancel all or any part of an order.
- (b) We may provide you with 30 days written notice that we will cancel all or any part of an order if we are unable to supply you the goods.
- (c) If anything in clauses 6.3(b)(i) to 6.3(b)(vii) inclusive occurs in respect of you, we may cancel the whole or part of an order by giving you written notice. If we cancel in these circumstances, you must pay us the amount applicable as set out in clause 4.2(d) below.
- (d) **Consequences of cancelling an order and fees:** If you cancel an order in accordance with clause 4.2(a) or clause 3.5(d)(ii), you must pay to us (as a genuine pre-estimate of our loss as a result of the cancellation of the order):

- (i) if we hold finished goods referable to the relevant order and the time for delivery of those goods is less than 6 months after the date of the cancellation, the full price of those goods;
 - (ii) if we hold raw materials or have placed orders for raw materials that cannot be cancelled and the raw materials have been purchased or ordered solely for the purpose of the relevant order, the actual cost to us of those raw materials; and
 - (iii) if we hold goods other than raw materials or finished goods that have been produced solely for the purpose of the relevant order, the actual cost to us of those goods.
- (e) You acknowledge and agree that you have no claim against us and we are not liable to you for any loss, liability, cost or expense which you may incur as a result of a cancellation under this clause 4.

5 GST

- (a) In these Terms:
- (i) **GST** means has the meaning given to that expression in the GST Act; and
 - (ii) **GST Act** means *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.
- (b) Unless we state otherwise, the price for any goods is GST exclusive.
- (c) In addition to the price for the goods payable by you to us, you must pay to us an amount equal to any GST we are liable for on any supply by us under these Terms.
- (d) You must pay amounts for GST, without deduction or set off of any other amounts, at the same time and on the same basis as you pay the price (or the first part of it if we agree to your paying the price by instalments).
- (e) You do not need to make a payment for a taxable supply made under or in connection with these Terms until you receive a tax invoice for the supply to which the payment relates.

6 Payment

6.1 Invoices

- (a) We will send you a tax invoice for all amounts which are due to us as payment for the goods provided which will include the following information:
- (i) the date or dates of performance to which the invoice relates;
 - (ii) a description of the goods provided in sufficient detail to communicate the identity, nature and extent of the goods provided;
 - (iii) any GST, taxes, duties and any other charges payable in respect of the provision of the goods, identified in relation to each specific good;
 - (iv) our address and details for payment; and
 - (v) the relevant order number.

6.2 Payment Terms

- (a) Unless we otherwise agree in writing (including, without limitation, any date specified for payment on an invoice we give to you), you must pay us for the goods you buy within 30 days from the end of the month in which we deliver the goods to you in accordance with clause 7.
- (b) Where you make a payment to us via cheque, negotiable instrument or electronic funds transfer, such payment will be deemed to have been made on the date on which the full amount of that payment is available to us as cleared funds.
- (c) You must make all payments on or before the due date for such payments in accordance with these Terms.

6.3 Default in payments, change in creditworthiness and interest payments

- (a) If at any time you default in respect of your payment obligations under an order or these Terms, you agree that we may:

- (i) cancel or suspend any uncompleted order that has been accepted by us; or
 - (ii) suspend the supply or delivery of goods to you. This suspension will continue until all overdue payments are made.
- (b) We may require immediate payment of all unpaid monies (whether or not actually due and payable by you) if any of the following occurs:
- (i) your creditworthiness has become unsatisfactory to us acting reasonably;
 - (ii) an order is made, or a resolution is passed, to wind you up, a meeting is called to consider a resolution to wind you up or a provisional liquidator is appointed;
 - (iii) a receiver or receiver and manager is appointed over the whole or part of your business or assets;
 - (iv) you enter any arrangement or composition with any of your creditors;
 - (v) you are placed under administration or a meeting is called or some other step taken to place you under administration;
 - (vi) you cannot pay your debts as they fall due; or
 - (vii) you do not comply with, or commit a material breach of, these Terms.
- (c) We may charge you interest if full payment of amounts due and payable is not made by the due date. Interest will be charged at the prevailing penalty interest set under section 2 of the *Penalty Interest Rate Act 1983 (Vic)* from the due date until full payment is made.
- (d) You must pay all reasonable expenses incurred by us in enforcing our rights under these Terms, including without limitation all reasonable collection fees in commissions, administrative costs, out-of-pocket expenses and legal costs (calculated on a solicitor/own client basis) incurred by us as a direct consequence of your default in payment according to these Terms.
- (e) We may at any time set-off amounts owed by us or any of our related bodies corporate to you against amounts owed by you to us or our related bodies corporate.

6.4 Disputes

If you dispute in good faith whether the whole or part of an invoice submitted by us is payable:

- (a) you must give written notice to us within 10 business days of receipt of the invoice, of the amount disputed and reasons for the dispute;
- (b) if ebm and you are unable to resolve any dispute between them regarding the amount invoiced within five business days of us receiving your notice under clause 6.4(a), either party may invoke the dispute resolution process in clause 26;
- (c) each party must comply with its other obligations under these Terms until the dispute is resolved; and
- (d) if the decision made or reached in respect of the dispute is that a lesser amount than the full amount of the invoice in question is payable by you, we must:
 - (i) if you have paid the invoice, promptly refund to you the difference between the amount invoiced and that lesser amount; and
 - (ii) if you have not paid the invoice, issue a replacement invoice.

7 Delivery

- (a) Unless we otherwise agree in writing, delivery takes place when we notify you that you may collect the goods from our premises at the address set out in the quotation (delivery is ex-works (EXW)). You must collect any goods made available from our premises within 7 days of us notifying you that the goods are available for collection.
- (b) Any costs for the delivery of goods by us to you which are in addition to those set out in our quotation provided to you pursuant to clause 3.2, will be the subject of a separate quotation and invoice for delivery costs between you and us. No additional delivery costs will be charged to you above the sea freight costs of delivery to Melbourne as set out in our quotation provided to you pursuant to clause 3.2 until a separate quotation and invoice for delivery costs has been entered

into between you and us. Please contact us to discuss arranging for delivery of goods to your nominated address and the associated charges that will be payable. Refer to section 27.3 (“Notices”) below in respect of how to contact us.

- (c) Where we agree to deliver any goods to you, we will take reasonable care in the packing and handling of these goods.
- (d) Any delivery time or time for collection that we give you is only an estimate. We are not liable to you for any loss or damage you suffer or incur as a result of our late delivery.
- (e) You must still accept and pay for the goods even if we deliver the goods late.
- (f) We may deliver, or make available for collection, the goods in instalments. Each instalment must be treated as a sale under a separate contract and will be invoiced based on each instalment. If we fail to deliver or make available for collection any instalment, you must still accept and pay for the remaining instalments. If you do not pay for an instalment, we may treat the non-payment as a breach of contract relating to the other instalments.
- (g) You may request in writing that we extend the date for delivery of the goods by a maximum of up to 90 days. We may agree to or deny any such request. By making any request, you irrevocably agree to pay on demand our reasonable costs of storage and handling of any goods that are held by us until the extended date of delivery. These storage and handling costs are based on a per pallet per day expense (which as of 1 April 2024 was a minimum of \$7.80 per pallet per day. An up to date cost will be provided as required.).
- (h) If the dispatch or delivery date on an order is extended beyond 90 days from the initial dispatch or delivery date as agreed pursuant to clause 7(g), ebm reserves the right to dispatch the order to you on a date determined by ebm as a valid fulfilment of your order but in any case not more than 10 days beyond the 90 day period agreed pursuant to clause 7(g).
- (i) If the quantity of goods delivered is less than the amount you ordered, you must notify us in writing of the shortfall within 14 days after delivery, otherwise we will take it that the correct quantity of goods has been delivered, and you must accept the goods and pay for them in full despite the shortfall.
- (j) If the quantity of goods delivered is more than the amount you ordered, you must inform us in writing within 14 days after delivery so we can recover the excess goods from you. If you commence using or dealing with the excess goods, or you do not make them available for our collection, we are entitled to charge you the current price of the goods for the excess goods as set out in the price list communicated to you in accordance with clause 3.

8 Storage and Handling

We may charge you reasonable costs for storage of the goods if you do not collect the goods or provide adequate delivery instructions within 7 days after we tell you that the goods are ready for collection. You must pay the storage and handling charges within 30 days from the date of invoice issued. These storage and handling costs are based on a per pallet per day expense (which as of 1 April 2024 was a minimum of \$7.80 per pallet per day. An up to date cost will be provided as required.).).

9 Reserve or “buffer” stock

- (a) We may agree to a request based on a non-formal preliminary order by you to manufacture, or order from our suppliers, particular goods (“**reserve stock**”) to your specifications or based on existing goods. If we agree to provide you with reserve stock, the processes we and you undertake in the course of manufacturing or ordering the reserve stock are subject to these Terms and this clause 9 (including the obligation to purchase the reserve stock in clause 9(b)). A formal order of the goods in the reserve stock is still required for the purposes of clause 3.5 at the time of purchase.
- (b) If we agree to provide you with reserve stock, you have the obligation to order and purchase from us all reserve stock agreed between ebm and you, before the later of:
 - (i) 6 months after you have placed the preliminary order referred to in clause 9(a); or
 - (ii) by 30 June of the year in which the preliminary order referred to in clause 9(a) is placed .

- (c) For the purposes of the definition contained in clause 9(a), reserve stock includes:
 - (i) products ordered from our factories or our suppliers' factories, for which preparatory work has been undertaken;
 - (ii) products in the process of being manufactured;
 - (iii) stock in transit; and
 - (iv) stock held in our warehouse for you.

10 Return of goods

- (a) You are entitled to return goods to us in accordance with clauses 19 (Limitation of Liability) and 11 (Damage to goods and defects) of these Terms and in accordance with all applicable laws (including your rights under the Australian Consumer Law).
- (b) Except in accordance with clause 11, any return of goods to us may be subject of a handling charge at our absolute discretion. The handling charge will typically be 25% of the invoice value of the goods you are seeking to return (being our estimate of reasonable shipping costs to return the goods).

11 Damage to goods and defects

- (a) You must notify us in writing within 14 days after delivery or collection of:
 - (i) any goods that you claim to have been physically damaged before risk in the goods passed to you in accordance with clause 12; or
 - (ii) any goods that you claim to be defective.
- (b) Without limiting or excluding your rights at law (including your rights under the Australian Consumer Law), you may not bring any claim for physical damage to, or any defect in, any goods our liability for any such claims is at our absolute discretion unless you have given us written notice with details of the damage or defect within 14 days of delivery to you, or collection by you, of the goods.
- (c) If following the initial operation or usage of our goods you become aware that our goods may be defective, you must contact us in writing within 7 days and provide us details of the possible defect, otherwise our liability for any subsequent claim will be in accordance with your rights at law including your rights under the Australian Consumer Law.
- (d) Where you make a claim of any physical damage to, or defect in, the goods you must allow our employees or agents upon reasonable written request of not less than 48 hours' notice and during your normal business hours full and free access to the goods in relation to which the claim is made for the purpose of conducting any tests and examinations necessary to determine whether the claim is justified or not.
- (e) All returns of goods to us that are claimed to be damaged or defective will be at the cost of the customer unless otherwise agreed in writing. The costs will typically be 25% of the invoice value of the goods you are seeking to return (being our estimate of reasonable shipping costs to return the goods).

12 Risk

- (a) Risk of damage to, or loss of, the goods passes to you:
 - (i) if we are responsible for delivering the goods to you at your nominated address, at the time of delivery; or
 - (ii) if we are not responsible for delivering the goods to you, at the time that we notify you that the goods are available for collection.
- (b) We are not liable to you for any loss or damage or deterioration of the goods after actual delivery, even if we arrange freight other than as set out in clause 11.

13 Title

- (a) We retain title to and ownership of the goods until you have paid all monies you owe us (and all cheques, negotiable instruments and electronic funds transfer have been paid and cleared).
- (b) Until title passes to you, you hold the goods on our behalf. You must return the goods to us if we ask you to. We can retake possession of any goods in your possession (notwithstanding they are fixed to or incorporated with other goods) which have not been paid for in full if anything in clauses 6.3(b)(i) to 6.3(b)(vii) inclusive occurs.
- (c) You must allow us to enter any premises under your control where the goods are kept to retake possession of the goods if we are entitled to do so in accordance with this clause 13 or clause 14.

14 PPSA

- (a) In these terms:

PPSA means the *Personal Properties Securities Act 2009 (Cth)*.

PPSR means the Personal Property Securities Register established pursuant to the PPSA.

Security Interest means an interest in personal property provided for by a transaction that, in substance, secures payment of money or performance of an obligation (without regard to the form of the transaction or the identity of the person who has title to the property), and also includes a transaction which the PPSA treats as a security interest whether or not the transaction concerned, in substance, secures payment or performance of an obligation or a security interest as defined in section 12 of the PPSA.

- (b) You acknowledge that pursuant to these Terms you grant us a Security Interest in the goods and, for avoidance of doubt, the proceeds of sale of the goods for the purposes of the PPSA.
- (c) You consent to us effecting a registration on the PPSR (in accordance with the PPSA) in relation to the Security Interest arising under or in connection with these Terms and you agree to provide all assistance required by us to facilitate this.
- (d) You acknowledge and agree that in relation to the part of the goods that is inventory, you will not allow any Security Interest to arise in respect of those goods unless we have perfected our Security Interest in the goods prior to your possession of the goods.
- (e) If Chapter 4 of the PPSA applies to the enforcement of the Security Interest arising under or in connection with these Terms, you agree:
 - (i) to the extent that section 115(1) of the PPSA allows this, the following provisions of the PPSA will not apply to the enforcement of that Security Interest: section 95 to the extent that it requires us to give a notice to you, section 96, section 121(4), section 125 (obligation to dispose of or retain collateral), section 130 to the extent that it requires us to give notice to you, paragraph 132(3)(d), subsection 132(4), section 142 and section 143 (reinstatement of security agreement); and
 - (ii) to the extent that section 115(7) of the PPSA allows this, the following provisions of the PPSA will not apply to the enforcement of that Security Interest: section 127, section 129(2) and (3), section 132, section 134(2), section 135, section 136(3), (4) and (5) and section 137.
- (f) If you make payment to us at any time whether in connection with these Terms or otherwise, we may, at our absolute discretion, apply that payment in any manner we see fit.
- (g) You agree to promptly notify us of any changes to your name or address (as specified in these Terms).
- (h) You agree to do anything we request you to do (such as obtaining consents, signing and producing documents, producing receipts and getting documents completed and signed):
 - (i) to provide more effective security over the goods;
 - (ii) to register in respect of a Security Interest constituted by these Terms at any time;
 - (iii) to enable us to exercise our rights in connection with the goods; and

- (iv) to show us whether you have complied with these Terms.
- (i) You shall pay on demand any losses arising from, and any costs and expenses incurred in connection with, any action taken by us under or in relation to the PPSA, including any registration, or any response to an amendment, demand or a request under section 275 of the PPSA.
- (j) Any notices or documents which are required or permitted to be given to us for the purposes of the PPSA must be given in accordance with the PPSA.
- (k) You waive the right to receive any notice under the PPSA (including notice of a verification statement) unless the notice is required by the PPSA and cannot be excluded.

15 Disclosure

- (a) Each party agrees not to disclose information of the kind mentioned in section 275(1) of the PPSA, except in the circumstances required by sections 275(7)(b) to (e) of the PPSA. You agree that you will only authorise the disclosure of information under section 275(7)(c) of the PPSA or request information under section 275(7)(d) of the PPSA, if we approve.
- (b) Nothing in clause 15(a) will prevent any disclosure by us that we believe is necessary to comply with our other obligations under the PPSA or under any other applicable law.
- (c) To the extent that it is not inconsistent with clauses 15(a) or 15(b) above constituting a "confidentiality agreement" for the purposes of section 275(6)(a) of the PPSA, you agree that we may disclose information of the kind mentioned in section 275(1) of the PPSA to the extent that we are not doing so in response to a request by an "interested person" (as defined in section 275(9) of the PPSA) pursuant to section 275(1) of the PPSA.

16 Force Majeure

- (a) We are not liable for failure to comply with these Terms if the failure (directly or indirectly) arises out of any circumstances which are not within our reasonable control. If such circumstances occur, we may delay or cancel delivery of the goods or reduce the quantity to be delivered.
- (b) Examples of situations beyond our reasonable control include, but are not limited to, strikes, lock-outs, accidents, war, fire, flood, explosion, shortage of power, breakdowns of plant or machinery, shortage of raw or other materials from normal sources of supply, acts of God and any order or direction of any local, State or Federal Government, Government authority or instrumentality (within the Commonwealth of Australia or elsewhere).
- (c) We are not obliged to remedy such circumstances. We are especially not obliged to settle any strike, lock-out or any other kind of labour dispute.

17 Loan Stock and Sample Products

- (a) From time to time we may provide you with goods on loan ("**loan stock**"). If we agree to provide you with loan stock, this will be noted on any invoice or delivery document that we provide to you. This loan stock is provided to you for the sole purpose of enabling you to examine and trial the product.
- (b) Unless we agree otherwise in writing, loan stock is provided to you for a period of two months, at the end of which you must return the loan stock to us at your cost.
- (c) Notwithstanding anything else in these Terms, we retain title to all loan stock at all times.
- (d) We reserve the right to request the return of any loan stock from you at any time. You must return the loan stock to us within seven (7) days of any such request from us at your own cost.
- (e) You must return any loan stock in near-new condition. You agree that you may be charged for any excessive damage or wear to any loan stock or for any period of possession longer than two months, or any other such period as we agree to in writing. The charge for use of the loan stock in excess of 2 months will be the invoice price of the goods lent to you.
- (f) From time to time we may also provide you with samples of goods ("**sample stock**"). Notwithstanding anything else in these Terms, you are entitled to retain all sample stock and are not required to return the sample stock to us.

- (g) For both loan stock and sample stock, these products are not to be sold, loaned, provided to or displayed to any third party without our express written permission.

18 Product Operation and Safety

You must take all reasonable steps to ensure that any end users and installers carefully read and apply our operating and/or safety instructions prior to any usage or application of our products. 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 at:

<http://www.ebmpapst.com/instructions>

19 Limitation of Liability

- (a) Subject to these Terms, any written warranty we provide to you in these Terms and any rights which cannot be excluded by law including under the Australian Consumer Law ("**Non-Excludable Rights**"), all warranties, conditions, liabilities or representations (whether express, implied, statutory or otherwise) as to the quality or fitness of the goods or as to the accuracy of information, advice or other services concerning the goods, are expressly excluded.

- (b) Our goods and services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the service, you are entitled:

- (i) to cancel your service contract with us; and
- (ii) to a refund for the unused portion, or to compensation for its reduced value.

You are also entitled to choose a refund or replacement for major failures with goods. If a failure with the goods or a service does not amount to a major failure, you are entitled to have the failure rectified in a reasonable time. If this is not done you are entitled to a refund for the goods and to cancel the contract for the service and obtain a refund of any unused portion. You are also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the goods or service.

- (c) In addition to other rights and remedies you may have under a law (including under the Australian Consumer Law) in relation to our goods and services and where any products are properly used strictly according to our operating instructions available either electronically at http://www.ebmpapst.com.au/en/publicationsdownloads/operating_instructions/operating_instructions.php or in written form from us on request:

- (i) we warrant that any products that are manufactured within the ebm-papst group of companies (**ebm Group**) will be free of defects in workmanship and/or materials for a period of two years from the date of delivery; and
- (ii) we warrant that all other products that we supply to you will be free of defects in workmanship and/or materials for a period of one year from the date of delivery.

- (d) In addition to other rights and remedies you may have under a law in relation to our goods and services and also further to clause 19(c), we warrant that EC products that are manufactured by the ebm Group will be free of defects in workmanship and/or materials for a period of five years from the date of manufacture; where:

- (i) for the purposes of this clause 19(d), **EC products** means products that are fan products manufactured by ebm Group that are driven with brushless DC motors which use electronic commutation as a method of motor commutation and which do not fall within any of the categories set out in clause 19(d)(ii); and
- (ii) the following are not EC products and are not covered by the warranty given in clause 19(d):
 - (A) Fans not used in applications within Australia or New Zealand;
 - (B) Fans with power input less than 125W inclusive of power supplied to any inbuilt control system;
 - (C) Fans with power input greater than 30kW inclusive of power supplied to any inbuilt control system;

- (D) Fans not containing an external rotor motor as the prime mover;
 - (E) Fans used in mobile applications;
 - (F) Fans used in agricultural applications;
 - (G) Fans integrated in whitegoods, including laundry and washer dryers ≤ 3 kW maximum electrical input power;
 - (H) Fans with a best energy efficiency point (bep) at 8000 rotations per minute or more;
 - (I) Fans used in potentially explosive atmospheres as defined in Directive 94/9/EC of the European Parliament and of the Council;
 - (J) Fans used for emergency use only, at short-time duty of 1 hour or more, with regard to fire safety requirements for temperatures of 300°C and above set out in Regulation (EU) No 305/2011 of the Council and the Parliament
 - (K) Fans used in nuclear installations, as defined in Article 3 of Directive 2009/71/EURATOM military or civil defence establishments and wind turbines;
 - (L) Fans used where operating temperatures of the gas being moved is higher than 100 °C or lower than – 40 °C;
 - (M) Fans used where operating ambient temperature for the motor, if located outside the gas stream, driving the fan is higher than 65 °C or lower than – 30 °C;
 - (N) Fans used with a supply voltage > 1 000 V AC or > 1 500 V DC;
 - (O) Fans used for handling toxic, highly corrosive or flammable gases or vapours as set out in Regulation (EC) No 1272/2008 and its adaptations;
 - (P) Fans used for handling abrasive substances with a hardness of at least 5 Mohs with a concentration of at least 100 mg/m³;
 - (Q) Fans used for handling gases containing bio-hazardous substances of risk groups 2, 3 and 4 as set out in Directive (EC) 2000/54/EC;
 - (R) Fans used for handling gases containing carcinogens or mutagens as set out in Directive 2004/37/EC
 - (S) Fans used for handling gases with a solid particle concentration of more than 200 mg/m³ and/or particles with an average diameter of 1 mm;
 - (T) Fans used for handling gases with a compressibility factor, rounded to the nearest 2 decimal places, in the designated pressure and temperature range of the scope that is not equal to 1,00;
 - (U) Fans used for in cordless or battery operated equipment; and
 - (V) Fans used for in hand-held equipment whose weight is supported by hand during operation.
- (e) We are not liable to you for any expenses associated with a claim by you against the warranties in clauses 19(c)(i), 19(c)(ii) and 19(d) including, all extended liability costs such as the cost of removal of the goods or legal costs.
- (f) Subject to clause 19(b) and to the extent permitted by law (including under the Australian Consumer Law), our liability for a breach of the express warranties in clause 19, these Terms, any Non-Excludable Rights or any other written warranty that we provide to you is limited, at our option, to one or more of the following:
- (i) in the case of goods supplied by us:
 - (A) replacing the goods or supplying equivalent goods; or
 - (B) paying the cost of replacing the goods or of acquiring equivalent goods.
 - (ii) in the case of services supplied by us:
 - (A) the supply by us of the services again; or

- (B) the refund of the price paid by you for the services.
- (g) You indemnify us for all liabilities, losses, damages, costs or expenses suffered or incurred by us as a result of any of the following:
 - (i) our compliance with your instructions regarding the goods;
 - (ii) your failure to:
 - (A) provide or display safety information on or relating to the goods; or
 - (B) comply with laws relating to the use, sale, marketing, labelling or marking of goods;
 - (C)
 - (iii) any statement you make about the goods without our written approval;
 - (iv) the use of goods by you or a third party;
 - (v) your negligence or breach of these Terms,

except to the extent that the loss or damage was directly caused by, or in connection with, a grossly negligent, unlawful, or wilful act or omission by ebm or its employees, agents and subcontractors.
- (h) With regard to our warranties against defects in clauses 19(c)(i), 19(c)(ii) and 19(d) if you have a query or claim, please contact our Commercial Manager in writing in accordance with the contact details in clause 27.3(b). Once we receive your written claim, we will notify you within 5 business days that we have received your claim and that we have commenced processing and assessing your claim.
- (i) If we assess your claim under the warranty against defects contained in clauses 19(c)(i), 19(c)(ii) or 19(d) and we believe the claim is valid, we will (in our sole discretion) unless required otherwise by law (including under the Australian Consumer Law):
 - (i) raise a credit against your account to the value of the purchase price of the goods; or
 - (ii) send replacement goods; or
 - (iii) repair the goods,

depending on what is most suitable to the particular circumstances.

20 Privacy Authority

20.1 Application for credit and information collected

- (a) For the purposes of assessing your creditworthiness and whether to offer to sell our goods to you on credit terms or to collect overdue payments, you irrevocably consent and authorise us, our servants and agents to make such enquiries as we deem necessary for this purpose, including without limitation, making enquiries with and obtaining such reports as may be allowed by law from:
 - (i) persons nominated by you as trade referees;
 - (ii) your creditors, bankers and financiers nominated by you;
 - (iii) your credit providers nominated by you;
 - (iv) your mortgage and trade insurers nominated by you; and
 - (v) credit reporting agencies or any business which provides information about the commercial creditworthiness of persons from time to time,

("the Information Sources").
- (b) Failure by you to provide us with details of the Information Sources (or any other information requested in this application) may result in us rejecting an application to sell goods to you on credit terms in our sole discretion.
- (c) You agree and consent to the Information Sources providing us with any such information requested by us and permitted to be given by law for the purpose of assessing:

- (i) your and any guarantor's creditworthiness and whether to offer to sell our goods to you on credit terms or collecting overdue payments; and
 - (ii) whether to accept a person as your guarantor.
- (d) You consent to us disclosing the contents of any credit report or relevant personal information to a credit reporting agency or commercial credit reporting agency for the purpose of that credit reporting agency creating or adding to any credit information filed in relation to you or any other person or business.
- (e) You consent to us using your contact information that we collect from you for the purpose of interacting with you about your application for credit and/or to market our products to you.
- (f) By completing and submitting these Terms or any order or other communication under these Terms, you warrant that:
- (i) you have read and understood this application for trade credit and the Terms and agree to be bound by them;
 - (ii) the information contained in this application for trade credit is correct and acknowledge that we rely on that information in granting you credit; and
 - (iii) all individuals nominated in this application and whose personal information you have provided to us or we obtain from the Information Sources for the purposes of assessing your and any guarantor's creditworthiness and whether to offer to sell our goods to you on credit terms or collecting overdue payments have been made aware of the ebm-papst A&NZ Pty Ltd Privacy Policy located at [https://www.ebmpapst.com/content/dam/ebm-papst/loc/apac/australia/Privacy%20Policy%20-%20ebm-papst%20A-NZ%20\(final%2010042024\)%203454-4383-4412%20v.3%20\(002\).pdf](https://www.ebmpapst.com/content/dam/ebm-papst/loc/apac/australia/Privacy%20Policy%20-%20ebm-papst%20A-NZ%20(final%2010042024)%203454-4383-4412%20v.3%20(002).pdf) and consent to our use of their personal information, for all purposes relating to this agreement.

20.2 Use of information collected

- (a) We are committed to protecting the privacy of individuals we deal with. For information about how we manage personal information, including:
- (i) how you, or third parties nominated by you, may request access, or make corrections, to the information that we hold,
 - (ii) how to make a privacy compliant; and
 - (iii) the overseas storage of personal information;
- see the ebm-papst A&NZ Pty Ltd Privacy Policy located at [https://www.ebmpapst.com/content/dam/ebm-papst/loc/apac/australia/Privacy%20Policy%20-%20ebm-papst%20A-NZ%20\(final%2010042024\)%203454-4383-4412%20v.3%20\(002\).pdf](https://www.ebmpapst.com/content/dam/ebm-papst/loc/apac/australia/Privacy%20Policy%20-%20ebm-papst%20A-NZ%20(final%2010042024)%203454-4383-4412%20v.3%20(002).pdf)
- (b) The authorisations contained in these Terms will continue to remain in full force and effect until all credit accounts cease to be made available to you and all amounts owing to us are paid in full.

21 Intellectual Property

- (a) In these Terms, ***“Intellectual Property Rights”*** means all present and future rights throughout the world conferred by statute, common law or equity in or in relation to inventions, discoveries, innovations, know how, technical information and data, prototypes, processes, improvements, patent rights, circuitry, drawings, plans, specifications, copyright, trade mark rights, design rights, plant variety rights, other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields and all other intellectual property rights as defined in Article 2 of the convention establishing the World Intellectual Property Organisation of 14 July 1967 as amended from time to time, whether or not registrable, registered, or patentable. These include all rights in all applications to register these rights, all renewals and extensions of these rights and all rights in the nature of these rights.
- (b) Title in the Intellectual Property Rights in any goods, documents and other materials delivered or supplied to you is retained by us. You acknowledge that there is no transfer of title or ownership to you of any Intellectual Property Rights in any goods, documents and other materials delivered or supplied to you by us.

- (c) You must not take, appropriate or represent as your own any Intellectual Property Rights in any goods, documents and other materials delivered or supplied to you by us under these Terms.

22 Product Design/Manufacture

- (a) Where you bring a sample product for us to reproduce, or where you otherwise provide instructions to us in relation to the manufacturing, design or construction of a product, you:
 - (i) warrant that any manufacture or supply of, or any other dealing with, such products will not infringe the Intellectual Property Rights of any third party;
 - (ii) agree and acknowledge that all Intellectual Property Rights in such products, all prototypes and any documents or other materials created in connection with or otherwise associated with such products will be owned by and vest solely in us upon creation; and
 - (iii) assign any right, interest or title in any Intellectual Property Rights that you might have in relation to the product and any associated design ideas, documents and other related material.
- (b) You must promptly execute all documents and do all things that we reasonably require from time to time of you to effect, perfect or complete any obligations under this clause.

23 Infringement

- (a) If you learn of:
 - (i) any infringement or threatened infringement of the Intellectual Property Rights of the ebm Group or its suppliers; or
 - (ii) any common law passing-off or any conduct which may cause deception or confusion to the public by a third party,you must promptly notify us in writing giving particulars of the infringement.
- (b) You agree to assist us in the protection of and enforcement of the Intellectual Property Rights of the ebm Group or its suppliers.
- (c) We may in our sole discretion commence or prosecute any claim or suits (“**Infringement Proceedings**”) in our own name or join you as a party to the Infringement Proceedings.
- (d) You agree to execute all documents and do all things reasonably necessary to aid and cooperate in the prosecution of any Infringement Proceedings brought by us under this clause.
- (e) With respect to all Infringement Proceedings in which you are joined as a party, we have the exclusive right to instruct solicitors and counsel (as applicable) of our choosing and to direct the handling of the Infringement Proceedings and any settlement.

24 Confidential Information

- (a) In these Terms, “**Confidential Information**” means any information including all know-how, financial information and other valuable or sensitive information of any nature, trade secrets, formulae, graphs, drawings, designs, samples, devices, functional specifications and other material of whatever description provided to you by us for the purposes of these Terms, in any form whatsoever (including oral, written, and electronic information) of a technical, business, corporate, commercial or financial nature of or in relation to ebm, its related bodies corporate, associated entities and its business, shareholders or unitholders, or which we make you or your agents aware is confidential and / or proprietary, or which is evident on its face as being confidential and / or proprietary, and includes:
 - (i) customer lists and contact details;
 - (ii) reports or advice from professional advisers or other experts;
 - (iii) marketing, sales and pricing information;
 - (iv) financial information and records;
 - (v) supplier information;
 - (vi) employee information and records;

- (vii) product information;
- (viii) trade secrets; and
- (ix) all information that is personal information for the purposes of the *Privacy Act 1988* (Cth), but does not include information which:
 - (x) is or becomes readily available in the public domain, other than as a result of a breach of these Terms;
 - (xi) is known to you before you received it and is not subject to an existing obligation of confidence between the parties; or
 - (xii) is provided to you by a third party who is not under an obligation of confidence in respect of the information.
- (b) You must:
 - (i) keep the Confidential Information private and secret;
 - (ii) not access, use or reproduce Confidential Information for any purpose other than in connection with the goods delivered or supplied to you by us, nor assist or permit any other person to do so;
 - (iii) not disclose Confidential Information except as permitted under these Terms; and
 - (iv) take all steps reasonably necessary to safeguard Confidential Information from unauthorised access, use or disclosure.
- (c) You may disclose Confidential Information:
 - (i) to your representatives if they need to know the Confidential Information and provided that you:
 - (A) ensure that your representatives do not use, reproduce or disclose the Confidential Information other than in accordance with these Terms; and
 - (B) accept liability to us for any failure of your representatives to do so;
 - (ii) if disclosure is required by applicable law, any court of competent jurisdiction, any rules or regulations of any regulatory authority or the listing rules of any stock exchange, provided that you, having regard to the required timing of the disclosure, and to the extent permitted by law, first notify and consult with us as to the form and content of the required disclosure ; or
 - (iii) with our prior written consent.

25 Termination

- (a) Either party may immediately terminate these Terms or an order by written notice to the other party if:
 - (i) the other party breaches a material term of these Terms or an order and does not remedy the breach within 10 business days of receiving written notice to do so or the breach cannot be remedied; or
 - (ii) the other party is subject to an event set out in clauses 6.3(b)(ii) to 6.3(b)(vi) (inclusive).
- (b) If these Terms or an order are terminated then all rights and obligations under these Terms or an order terminate on that date, except:
 - (i) rights that accrue before the date of termination; and
 - (ii) rights and obligations of the parties under clauses 19 (Limitation of Liability), 21 (Intellectual Property), 22 (Product Design/Manufacture), 23 (Infringement), 24 (Confidential Information) and 27 (General Conditions) and any other rights stated to survive the termination of these Terms.
- (c) The rights and obligations of the parties under the clauses referred to in clause 25(b)(ii) shall survive termination of these Terms or an order and shall continue to apply notwithstanding any termination of these Terms or an order.

- (d) If these Terms or an order are terminated for any reason, we may invoice for, and you remain liable to us in respect of, outstanding invoices and the amounts set out in clause 4.2(d).

26 Dispute Resolution

- (a) If any dispute arises in relation to an order or these Terms, including in relation to its interpretation or any aspect of its performance, no party may commence any form of legal proceedings, unless and until the parties have complied with the procedures set out in this clause 26, except where a party seeks urgent interlocutory relief or the dispute relates to compliance with this clause 26.
- (b) If any dispute arises in relation to an order or these Terms, either party may give written notice (**Dispute Notice**) to the other party claiming that a dispute has arisen, specifying the nature of the dispute, and request that a meeting be held between one duly authorised representative of each party within 5 business days.
- (c) If a party receives a Dispute Notice from the other party in accordance with clause 26(b), that party, and the party that gave the Dispute Notice, must cause a representative to attend at the meeting referred to in that notice, which may be held by contemporaneous linking by telephone or live audio visual transmission (or similar).
- (d) If the parties have not resolved the dispute within 5 business days of the meeting referred to in clause 26(c) (or such further period as agreed in writing by them), the parties must mediate the dispute, which must be conducted in Melbourne (or as agreed in writing between the parties), in accordance with the ACICA Mediation Rules (in operation from time to time) by the Australian Centre for International Commercial Arbitration (**ACICA**), except where they conflict with this clause 26 in which case this clause 26 will prevail.
- (e) If the parties are required by clause 26(d) to mediate the dispute, ACICA will appoint the mediator unless the parties agree on a mediator (**Mediator**).
- (f) The role of the Mediator is to assist in negotiating a resolution of the dispute. The Mediator may not make a decision that is binding unless the disputing parties otherwise agree in writing.
- (g) The costs of the Mediator must be paid equally by the disputing parties but otherwise each disputing party must pay their own costs of the mediation.
- (h) If the dispute is not resolved within 5 business days after referral to the Mediator, any disputing party may take legal proceedings to resolve the dispute.

27 General Conditions

27.1 Variation

- (a) We are entitled to vary these Terms at any time where, acting reasonably, it is necessary to do so to protect our legitimate business interests, including to change or modify the price of goods or the goods available to purchase.
- (b) Subject to clause 3.5 in respect of changes to price which will affect orders in progress, any other variation to these Terms will not affect orders already in progress at the time the variation takes effect, these orders will continue to be subject to the Terms at the time of the order. For a customer that has already entered these Terms, the varied Terms will apply to all orders submitted after the time the variation takes effect.
- (c) When we make changes to these Terms we will use reasonable endeavours to notify existing customers of the variation and will communicate the effect of the changes to you including by email (if a valid email address is held) or by issuing an updated list of products.
- (d) The amended Terms will take effect 14 days after we have notified you of the changes unless they are amended for an urgent safety reason in which case they will take effect from the date the change. It is your responsibility to check the Terms each time before you make an order and any subsequent order after a variation takes effect will be deemed as an acceptance of the revised Terms.
- (e) If you do not wish to continue with an order because we have changed the Terms, you must notify us that you do not wish to continue with an order and we will cancel your order at no cost to you. Refer to section 27.3 ("Notices") below in respect of how to contact us to cancel an order.

Refer to: www.ebmpapst.com.au, or www.ebmpapst.co.nz for more information.

27.2 Waiver

Even if we do not insist on strict performance of these Terms, we are not taken to have waived our right to later require strict performance. Even if we provide an express waiver, this is not to be taken as a waiver of a subsequent breach of a term or condition.

27.3 Notices

- (a) Notices under these Terms must be in writing. A notice must be delivered personally or sent by facsimile transmission, email or post to the other person at their last known address.
- (b) Subject to any notice in writing to you providing a new address for the service of notices under these Terms, our address for notices is as follows:
 - (i) Post: **ebm-papst A&NZ Pty Ltd 10 Oxford Road
Laverton North VIC 3026**
 - (ii) Facsimile: **(03) 9360 6464**
 - (iii) Telephone: **(03) 9360 6400**
 - (iv) Email: **auenquiries@au.ebmpapst.com
nzenquiries@au.ebmpapst.com**

27.4 Severability

If any of these Terms are invalid or unenforceable in any jurisdiction, they are, if possible, to be read down so as to be valid and enforceable. The read down provision will only apply in the relevant jurisdiction. If the provision cannot be read down, and it can be severed to the extent of the invalidity or unenforceability, it is to be severed. The rest of the provisions, and the validity or enforceability of the affected provision in any other jurisdiction, will not be affected.

27.5 Relationship of parties

Unless otherwise stated:

- (a) nothing in these Terms creates a joint venture, partnership, or the relationship of principal and agent, or employee and employer between the parties;
- (b) the legal relationship between ebm and you is that of principal and independent contractor; and
- (c) no party has the authority to bind any other party by any representation, declaration or admission, or to make any contract or commitment on behalf of any other party or to pledge any other party's credit.

27.6 Counterparts

These Terms may be executed in any number of counterparts and all of those counterparts taken together constitute one and the same instrument. Delivery of an executed counterpart of a signature page of these Terms by facsimile, PDF File (portable document file), DocuSign or other form of electronic execution shall be effective as delivery of a manually executed counterpart of these Terms.

27.7 Assignment

No party may assign or otherwise purport to transfer its rights or obligations under these Terms to any other person without the prior written consent of the other party.

27.8 Governing Law and Jurisdiction

These Terms are governed by the law in force in the State of Victoria, Australia. You agree to submit to the non-exclusive jurisdiction of the courts of Victoria and any courts which may hear appeals from those courts. You irrevocably agree that a judgment in any proceedings brought in the courts of Victoria, Australia will be conclusive and binding on each party and may be enforced in any courts of any other jurisdiction.