

MARCH 2022

## EBWE STANDARD TERMS AND CONDITIONS

The following terms and conditions apply to any sale of Product by EBW Electronics, Inc. a Michigan corporation ("EBWE" or "Seller") of 13110 Ransom Street, Holland Michigan 49424.

THESE TERMS AND CONDITIONS OF SALE, AND ANY PRICE QUOTATION BY EBWE TOGETHER WITH ANY WRITTEN AGREEMENT SIGNED BY BOTH PARTIES RELATED TO THE SALE OF PRODUCT TO PURCHASER, CONSTITUTE THE COMPLETE AND FINAL AGREEMENT OF EBWE AND PURCHASER ("AGREEMENT"). THIS AGREEMENT MAY NOT BE ADDED TO, MODIFIED, SUPERCEDED, OR ALTERED EXCEPT IN WRITING SIGNED BY EBWE'S AUTHORIZED REPRESENTATIVE. ANY OTHER TERMS AND CONDITIONS CONTAINED IN ANY REQUEST FOR PROPOSAL, PURCHASE ORDER, OR OTHER DOCUMENT OF PURCHASER, ARE HEREBY REJECTED WITHOUT FURTHER NOTICE TO PURCHASER. EBWE'S FAILURE TO OBJECT TO PROVISIONS CONTAINED IN ANY COMMUNICATION FROM PURCHASER WILL NOT BE A WAIVER OF THESE PROVISIONS. EBWE'S OFFER TO SELL PRODUCT IS EXPRESSLY CONDITIONED ON PURCHASER'S ACCEPTANCE OF THESE TERMS AND CONDITIONS OF SALE WHICH ACCEPTANCE WILL BE CONCLUSIVELY PRESUMED UPON PURCHASER'S ACCEPTANCE OF PRODUCT.

1. **Expiration of Quotation.** Unless previously withdrawn, EBWE's quotation is valid and may be accepted within the period stated therein or, if no period is so stated, within thirty (30) days after its date.
2. **Price.** The price is as stated in the quotation, but does not include – and the Purchaser shall pay - related freight charges, use tax, sales tax, excise tax, valued-added tax, or similar taxes, and for any tariffs that are not in effect on the date hereof. The price may be subject to adjustment based upon Purchaser's released documentation package and any changes to the Purchaser released documentation package, and to further adjustment as provided herein.
3. **Minimum Order.** Purchaser may be charged for consultation/engineering services if not included in the EBWE quote or if EBWE has provided the service and Purchaser does not complete the sale as quoted.
4. **Shipment and Risk of Loss.** The Product shall be shipped FOB EBWE's facility. Delivery may be in lots determined by EBWE. If EBWE is prevented by circumstances beyond its control to deliver the quantities at the times and in the amounts agreed upon, EBWE may, in its discretion, allocate production and delivery among its customers. Unless otherwise directed by Purchaser before the shipment date, EBWE may select any reasonable method of shipment. All risk of loss shall pass to Purchaser on the shipment date. Shipping charges will be indicated separately on the invoice.
5. **Inspection and Rejection.** Promptly on its receipt, Purchaser shall inspect the Product for damage, defect, or shortage. All claims that could be reasonably discovered in the course of inspection shall be waived, and Purchaser shall be deemed to have accepted the Product, unless EBWE is notified in writing of the same within ten (10) days after receipt of the Product for which the claim is made. If EBWE receives notice of, and confirms to its satisfaction that there is damage, defect, or shortage, EBWE shall have the right to cure the same within a reasonable time and the time for delivery will be extended accordingly.
6. **Return.** Purchaser shall not have the right to return Product without the consent of EBWE which may be withheld in EBWE's discretion.
7. **Materials.** The price of the Product is based upon EBWE's ability to acquire the necessary materials at a price reasonably related to the price at the time of the quote. If the materials are unavailable, or the price has materially (5% or more) changed at the time of manufacture for any reason beyond the control of EBWE, or the price was quoted based upon the volume of the order and the Product is not taken in the volume quoted, then the price of the Product will be renegotiated.
8. **Obsolescence.** EBWE will endeavor to minimize obsolescence, however, any costs caused by obsolete components, design changes, or otherwise, will be charged to and paid by Purchaser.

9. **Cancellation.** Purchaser shall have no right to cancel any purchase without the express written consent of EBWE. EBWE shall have the right to cancel its obligations under this Agreement in the event of a default by Purchaser of its obligations under this Agreement or if Purchaser becomes bankrupt or insolvent. If a cancellation is initiated or approved by EBWE, Purchaser shall reimburse EBWE for development, tooling, and NRE costs, the cost of materials in contemplation of the order for which EBWE is obligated to pay, direct costs incurred by EBWE in connection with its performance, and an additional amount equal to ten (10) percent of the forgoing amounts as a cancellation and processing fee.
10. **Delay.** Delivery dates are approximate unless otherwise stated in the quote. EBWE will not be responsible for any nonperformance or delay in its performance or for any damages that may be caused by such delay if the delay is directly or indirectly caused by fire, flood, accident, civil unrest, acts of God, war, terrorism, vandalism, accidents, governmental interference or embargo, labor strike, lockout, material unavailability or shortage, or other cause beyond the control of EBWE that interferes with the production, supply, or transportation of the Product or with the supply of materials used in connection with its manufacture.
11. **Storage.** If Purchaser delays delivery beyond the date that Purchaser requested, EBWE may charge a storage fee of one percent (1%) per month of the purchase price of the Product for each month after such date until Purchaser takes delivery.
12. **Payment.** Unless otherwise stated in the quote, payment terms will be net 30 days without setoff or other deductions or charges. Amounts due that are unpaid after 30 days of EBWE's invoice will bear interest at the rate of 1½% per month or the maximum rate permitted by law, whichever is less, plus collection costs and attorney fees if applicable. If Purchaser does not fulfill payment requirements in accordance with its terms, EBWE may require prepayment, cash on delivery, or other special payment requirement.
13. **Replacement parts.** If Purchaser requires EBWE to maintain an inventory of service or replacement parts after fulfillment of the production, Purchaser shall specify the number of units required to meet the obligation, which number shall be added to the purchase order and, if parts are to be held by EBWE, EBWE may at its discretion either (i) charge fees reasonably related to the cost of holding the parts for future availability or (ii) outsource the obligation to a recognized supplier of similar parts in which cases EBWE will be relieved of the obligation.
14. **Service requirements.** Service requirements will be quoted at end of life or when quantities and timing are known.
15. **Intellectual property.** Purchaser warrants that the manufacture of product according to the specifications provided or approved by Purchaser will not violate any patent, trademark, copyright, or other intellectual property right of any party. Purchaser will indemnify and hold harmless EBWE from and against any claim that the Product infringes on any such right.
16. **Warranty.** EBWE warrants that, for a period of 12 months from the date of shipment, the Product under normal use shall be free of defects in workmanship and materials. EBWE shall under no circumstance be liable for incidental, special, or consequential damages, or for loss of any nature arising out of or in connection with the sale of the Product to Purchaser or any resale thereof by Purchaser. This warranty is in lieu of all other warranties, express, statutory, implied, or otherwise made, including warranties of merchantability and fitness for a particular purpose. There is no warranty, and it is disclaimed, with regard to any use of the Product that is not known to EBWE at the time of the quote. Purchaser shall not extend and shall disclaim to Purchaser's customers any warranty on the part of EBWE.
17. **Confidential information.** Any information of EBWE and Purchaser that is disclosed to the other or that is received or otherwise accessed incidental to or in connection with this Agreement (collectively, the "Confidential Information"), shall be and remain the property of the disclosing party. Confidential Information may be used only to the extent necessary to perform this Agreement and the parties shall not disclose Confidential Information to any third party. In no event shall Purchaser acquire any right or interest in process information, including related know how, either existing or developed during the course of EBWE performance under this agreement and EBWE shall not acquire any right or interest in any materials or information provided to it by Purchaser. Confidential Information shall not include information which: (i) was in the possession of the other party at the time it was first accessed; (ii) was in the public domain at the time it was disclosed or accessed; (iii) enters the public domain through sources independent of the other party and through no breach of this provision by the other party; (iv) was lawfully obtained from a third party not known by to be under an obligation of confidentiality; or (v) was at any time developed independently of any disclosure or access.

18. **Employees.** Neither EBWE nor Purchaser will directly or indirectly, solicit any employees of the other for a period of two (2) years aft the last date of EBWE's and Purchaser's last transaction.
19. **LIMITATIONS ON DAMAGES.** EBWE, ITS, DIRECTORS, OFFICERS, AND EMPLOYEES SHALL NOT BE LIABLE TO PURCHASER IN CONTRACT, TORT, OR OTHERWISE, FOR ANY LOST PROFITS OR OTHER ECONOMIC LOSS OF PURCHASER, OR ANY DIRECT, INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL OR OTHER DAMAGES ARISING OUT OF ANY BREACH OF THIS AGREEMENT BY EBWE OR OF ANY OBLIGATIONS OF EBWE PURSUANT TO THIS AGREEMENT. IN NO CIRCUMSTANCES SHALL EBWE'S LIABILITY AND COSTS EXCEED THE SALE PRICE RECEIVED BY EBWE FOR THE PRODUCT AS TO WHICH THE CLAIM IS MADE.
20. **Indemnity.** Purchaser agrees to indemnify, hold harmless, and defend EBWE and EBWE's directors, officers, employees and agents, and the directors, officers, employees and agents of any affiliated company (the "Seller Indemnitees") from and against any and all claims, suits, losses, damages, costs, fees and expenses arising out of the death or injury to person or damage to property resulting from the sale, marketing or use of the Product by Purchaser or Purchaser's customers except to the extent that such claims, suits, losses, damages, costs, fees or expenses directly arise or result from any negligent or wrongful act or omission of EBWE.
21. **Remedies.** PURCHASER'S EXCLUSIVE REMEDY FOR AN EBWE BREACH OR FOR ANY OTHER CAUSE OF ACTION ARISING OUT OF CONTRACT OR TORT, INCLUDING BUT NOT LIMITED TO BREACH OF WARRANTY, IS EXPRESSLY LIMITED AT EBWE'S OPTION TO REPLACEMENT OF NONCONFORMING PRODUCT OR PAYMENT OF AN AMOUNT NOT TO EXCEED THE PURCHASE PRICE OF THE PRODUCT FOR WHICH DAMAGES ARE CLAIMED. PURCHASER SHALL HAVE NO RIGHT TO SETOFF, TO WITHHOLD PAYMENT, OR TO MAKE A REDUCTION IN PRICE. PURCHASER'S REMEDY OF REPLACEMENT OR REFUND IS AVAILABLE ONLY IF NONCONFORMANCE WAS NOT CAUSED BY PURCHASER OR OTHERS OR BY ACCIDENT, FIRE OR OTHER HAZARD.
22. **Assignment.** Without the express written consent of the other, neither EBWE nor Purchaser may assign any of its rights or obligations in connection with this Agreement.
23. **Changes, Modification.** No change in or modification of specifications, drawings, quantity, or delivery for the Product may be made without the prior written consent of EBWE signed by an authorized representative of EBWE. EBWE reserves the right to make a price adjustment if there is a modification or alteration from the original quotation.
24. **Waiver.** No waiver by EBWE shall be effective unless in writing signed by its authorized representative. If EBWE waives a default by Purchaser it shall not constitute a waiver of any other or further defaults.
25. **Notice.** Any notice to be provided to EBWE hereunder must be in writing and transmitted by U.S. First Class Mail, or by facsimile with copy by U.S. First Class Mail, addressed to: EBW Electronics, Inc. 11310 Ransom Street, Holland Michigan 49424 Attention: President; or by Facsimile: (616) 786-0513 Attention: President
26. **Governing Law.** The contract between Seller and Purchaser shall be governed by the laws of the State of Michigan. Purchaser and Seller consent to the jurisdiction of the Courts of the State of Michigan with venue in Ottawa County, Michigan and any litigation involving this Agreement shall be commenced only in Ottawa County, Michigan.
27. **Entire Agreement.** This Agreement, including these terms and conditions, constitutes the entire agreement between the parties with respect to its subject matter. Any prior or contemporaneous communications or agreements other than any pre-existing blanket sales agreement are hereby superseded. The contract may not be terminated or modified by any party unless in writing, signed by authorized representatives of both Seller and Purchaser.