



email completed application to **credit@ecmindustries.com** (all information provided will be held in the strictest of confidence)

**credit references** Complete these sections or attach an information sheet that includes all of the following information; must include three major references. Please include email address for international reference.

1. name \_\_\_\_\_

phone \_\_\_\_\_ fax \_\_\_\_\_ email \_\_\_\_\_

address \_\_\_\_\_

city \_\_\_\_\_ state \_\_\_\_\_ zip \_\_\_\_\_

2. name \_\_\_\_\_

phone \_\_\_\_\_ fax \_\_\_\_\_ email \_\_\_\_\_

address \_\_\_\_\_

city \_\_\_\_\_ state \_\_\_\_\_ zip \_\_\_\_\_

3. name \_\_\_\_\_

phone \_\_\_\_\_ fax \_\_\_\_\_ email \_\_\_\_\_

address \_\_\_\_\_

city \_\_\_\_\_ state \_\_\_\_\_ zip \_\_\_\_\_

## TERMS AND CONDITIONS OF SALE

Unless otherwise agreed to by ECM Industries LLC in writing, the following terms and conditions ("Agreement") apply to all purchases of Products. By placing an order for Products, you accept and agree to be bound to this Agreement. If you have placed an order, but do not wish to be bound to this Agreement, then you must either (i) promptly cancel such order in accordance with the Cancellation Policy (as defined below), or (ii) return the order in accordance with the Return Policy (as defined below).

**DEFINITIONS.** "ECM Industries LLC" a Delaware corporation, acting on behalf of itself and its affiliates, and doing business as the entity identified on your purchase order, order confirmation, quotation, or other form of purchase documentation. "Customer" or "you" means you and/or any of your affiliates that place an order for Products. "Products" includes Standard Products and Special Products. "Standard Products" are products (i) that have not been modified especially for a customer, and (ii) are available to the general public for purchase from ECM Industries LLC. "Special Products" are products that (i) are not a Standard Product, (ii) are a custom product or a modification of a Standard Product done at the request of or especially for a customer, or (iii) have been marked or labeled according to a customer's specifications.

**ORDERS.** All orders are subject to acceptance by ECM Industries LLC, which acceptance will be indicated by (i) written confirmation, (ii) electronic confirmation, or (iii) fulfillment and shipment of such order. Products must be ordered in standard pack quantities where applicable. Minimum billing is \$100 per order, excluding any freight charges. Orders for less than \$100 will be billed at this minimum amount, plus freight charges. ECM Industries LLC reserves the right to supply less than the quantity ordered of any ECM Industries LLC Product, at any time and without notice. All orders shall be deemed to be fully accepted by Customer unless ECM Industries LLC receives written notification to the contrary within fourteen (14) days of the invoice date of such order.

**PRICES.** All orders for Standard Products will be invoiced at the price in effect on the date the order was accepted, and all orders for Special Products will be invoiced at the price in effect at the time of shipment. All prices are subject to change without notice and are subject to shortages in materials or resources and increases in the cost of manufacturing. Taxes and shipping and handling charges are not included in ECM Industries LLC Product prices. Unless otherwise agreed to by ECM Industries LLC in writing, all costs, fees and expenses associated with the shipment of Products or the insurance of such products while in transit shall be paid by Customer, and will be calculated and added to the order prior to shipment.

**TAXES AND FEES.** All taxes, assessments, fees, and charges applied or imposed by any government relating to the sale, delivery, shipment or use of Products will be added to the purchase price of Products and will be paid by Customer, except to the extent that Customer provides ECM Industries LLC with an acceptable tax exemption certificate.

**DELIVERY.** Unless otherwise agreed to by ECM Industries LLC in writing, all orders will be delivered Ex-Works (within the meaning of INCOTERMS 2010). Scheduled shipping dates are estimates, and subject to change without notice. Unless otherwise agreed to by ECM Industries LLC in writing, actual delivery dates are not of the essence. ECM Industries LLC will have no liability to Customer or any third party with regard to any delay in delivery, regardless of the reason.

**CANCELLATION POLICY.** No orders which have been received by ECM Industries LLC may be cancelled or revised by Customer except with ECM Industries LLC's prior written consent and upon payment of reasonable cancellation charges compensating ECM Industries LLC for all costs incurred in work done and material purchased. ECM Industries LLC reserves the right (i) to determine what constitutes reasonable cancellation charges, and (i) to cancel any order at any time if Customer becomes insolvent or is in breach of any applicable law or any term of this Agreement. Orders for Special Products are non-cancellable.

**TITLE AND RISK OF LOSS.** Title to each order for Products shall pass from ECM Industries LLC to Customer upon ECM Industries LLC's tender of such order to the initial carrier. Loss or damage that occurs during shipping by a carrier selected by ECM Industries LLC shall be ECM Industries LLC's responsibility. Loss or damage that occurs during shipping by a carrier selected by Customer shall be Customer's responsibility. Acceptance of an order from the final carrier constitutes a waiver of any claims against ECM Industries LLC for delay, damage or losses arising from such order.

**CREDIT AND PAYMENTS.** All payments must be in U.S. dollars. Invoices are due and payable within the time period noted on Customer's invoice, or if not noted, then within thirty (30) days, measured from the date of the invoice, subject to continuing credit approval by ECM Industries LLC. ECM Industries LLC reserves the right to withdraw credit at any time and for any reason. ECM Industries LLC may invoice parts of an order separately or may invoice purchases of Products in one invoice. If Customer delays shipment for any reason without first obtaining the prior written approval of ECM Industries LLC, payments shall become due from the date on which ECM Industries LLC was prepared to make shipment and storage shall be at Customer's risk and expense.

**OVERDUE ACCOUNTS.** Timely payment for all invoices is of the essence. ECM Industries LLC reserves the right to charge Customer a late penalty of 1.5% per month applied against undisputed overdue amounts, or the maximum rate permitted by law. ECM Industries LLC shall have the right to set-off and deduct from any credit balance any sums owed from ECM Industries LLC. If Customer fails to make payment in accordance with the payment terms specified by ECM Industries LLC, ECM Industries LLC may, without any liability to Customer, defer shipments until such payment is made, or may, at its option, cancel all or any part of the unshipped order. Customer shall be liable to ECM Industries LLC for all collection expenses, including reasonable attorney's fees and court costs, incurred by ECM Industries LLC in attempting to collect any amounts due from Customer.

**CREDIT BALANCES.** Unless otherwise agreed to by ECM Industries LLC in writing, Customer must use any credit balances that have been issued by ECM Industries LLC within one (1) year of issuance. IF NOT APPLIED OR REQUESTED WITHIN SUCH PERIOD, ANY BALANCE REMAINING WILL BE SUBJECT TO CANCELLATION, AND ECM Industries LLC SHALL HAVE NO FURTHER LIABILITY WITH RESPECT THERETO.

**CORRECTIONS.** ECM Industries LLC is not responsible for pricing, typographical, or other errors in any offer, catalog, price list or quotation, and reserves the right to cancel orders arising from such errors.

**SPECIAL PRODUCTS.** All drawings, designs or specifications for Special Products must be mutually agreed upon in a written document signed by both parties. Orders for Special Products are noncancellable and nonreturnable. If Customer rejects any delivery of Special Products, in whole or in part, Customer is still liable for the full purchase price of such order.

**RETURN POLICY.** Subject to certain restrictions, new, unused, and unopened Standard Products may be returned to ECM Industries LLC after receiving a Return Merchandise Authorization (RMA) from ECM Industries LLC ("Authorized Returns"). To obtain an RMA, contact your Customer Services Representative or Technical Services Representative. Authorized Returns are subject to a 20% restocking fee. Authorization will not be given for the return of Products (i) which would, in ECM Industries LLC's sole opinion, result in an excess in the amount of stock ECM Industries LLC normally carries, (ii) which are discontinued Products, (iii) which were not invoiced within the previous twelve (12) month period, (iv) which have a Return Value (as defined below) greater than 10% of Customer's aggregated sales invoiced for the previous twelve (12) month period, or (v) which are Special Products. Unauthorized returns may be refused and returned freight collect. Authorized Returns must be in their original packaging, and, unless otherwise agreed to by ECM Industries LLC in writing, Customer is responsible for risk of loss and shipping and handling fees for Authorized Returns. The "Return Value" for Authorized Returns shall be the lesser of (i) the prevailing fair market value of such products at the time the RMA is issued or (ii) Customer's original purchase price for the products, adjusted for bundling and promotional pricing, if applicable. The Return Value shall be paid in the form of a credit to Customer's account to be used for future purchases of Products. Special Products and discontinued Standard Products are nonreturnable.

**SECURITY INTEREST.** Where allowed by prevailing law, ECM Industries LLC shall have a lien on all Products sold as security for payment on the invoice price, and upon request Customer shall provide and execute a financing statement showing such lien.

**DISCONTINUED PRODUCTS.** ECM Industries LLC may modify or discontinue Products at any time without prior notice to Customer. A change in a Product may occur after a Customer places an order but before ECM Industries LLC ships the Products. As a result, the Products a Customer receives might display minor differences from Products requested in a Customer order. However, modified or substituted Products will meet or exceed all material specifications of the original Products requested in such order. Discontinued Standard Products are nonreturnable. **LIMITED WARRANTIES; EXCLUSIVE REMEDIES.** Subject to certain limitations, exclusions, and conditions, ECM Industries LLC warrants to Customer that Standard Products (i) are, at the time of delivery, free from material defects in materials and workmanship and (ii) will, for the applicable periods set forth in ECM Industries LLC's Limited Warranty, materially conform to the specifications for such Standard Products. ECM Industries LLC's Limited Warranty is available at [www.powerprodllc.com/electrical/](http://www.powerprodllc.com/electrical/). This warranty does not apply to Special Products. Unless otherwise set forth in a writing signed by the parties, Special Products are provided a warranty of 1 year from the date of delivery. Except for this Limited Warranty, ECM Industries LLC makes no other warranty and disclaims all other warranties or liabilities as to any Product, whether express, implied, statutory, or otherwise, including all warranties of merchantability and fitness for a particular purpose.

**LIMITS OF LIABILITY. TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT WILL ECM INDUSTRIES LLC BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY SPECIAL, COLLATERAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ("EXCLUDED DAMAGES").** Excluded Damages include costs of inspection, removal, and reinstallation of products or other items, rework, or recall costs (including administrative and personnel costs) of replacing or substituting items, loss of goodwill, and loss of revenue or profits, without regard to whether ECM Industries LLC has been notified in advance of the possibility of any such claim or damage. ECM Industries LLC's total liability for any and all claims arising out of or in connection with this Agreement in any 12-month period shall not exceed the total amount paid by Customer during the prior 12 months of this Agreement for the specific product.

**UNAUTHORIZED USES.** Products shall not be used for automotive or transportation applications or environments unless the specific ECM Industries LLC Product has been designated by ECM Industries LLC as compliant with ISO/TS 16949 requirements.

**GOVERNMENT CONTRACTS.** Products are commercial items as defined in FAR 2.101. If Customer sells Products to any government, or to a government prime contractor or subcontractor, Customer shall be solely and exclusively liable for compliance with all government acquisition statutes and regulations. ECM Industries LLC makes no representations, certifications, or warranties whatsoever about compliance with government acquisition statutes and regulations, including, without limitation, those that may relate to pricing, quality, origin or content, and specifically rejects the flow down of all FAR clauses not required to be included in a subcontract for commercial items.

**LEGAL COMPLIANCE.** Customer agrees to comply with all applicable U.S. and foreign laws, regulations, orders and requirements pertaining to the purchase and sale of Products, their export from the U.S., and their import into the country of destination. Without limiting the generality of the foregoing, Customer acknowledges and agrees to comply with (i) all U.S. export licensing laws and regulations, (ii) all restrictions on the sale or other transfer of Products to prohibited parties, countries or end-users, and (iii) all restrictions on the sale or other transfer of Products for a prohibited end-use. In addition, Customer acknowledges and agrees to comply with the U.S. Foreign Corrupt Practices Act, the UK Bribery Act and all other applicable antibribery laws and regulations.

**DUTY TO DEFEND.** Customer agrees to defend, hold harmless and indemnify ECM Industries LLC and reimburse ECM Industries LLC for all claims, taxes, penalties, interest, costs, assessments and expenses that arise as a result of or in connection with any inadequacy or invalidity of any tax exemption certificate submitted by Customer or any act, omission or misrepresentation of Customer or any of its affiliates, employees, agents, contractors, customers, or representatives, which gives rise to any breach of this Agreement.

**FORCE MAJEURE.** ECM Industries LLC shall not be liable in any way for any delay or cancellation in shipment, manufacture or performance due to acts of God, war, riot, insurrection, terrorism, labor difficulties, accident, acts of civil or regulatory authorities, fires, floods, quarantine restrictions, plant conditions, delays in transportation, shortages of fuel, labor or any other condition beyond ECM Industries LLC's control.

**EXCLUSIVE AGREEMENT.** This Agreement constitutes the entire agreement between Customer and ECM Industries LLC with regard to Customer's purchase of Products, and supersedes all prior oral and written understandings, communications, or agreements between the parties. ECM Industries LLC objects to and rejects any additional or different terms or conditions in any form tendered by Customer, including expressly rejecting any provisions that dictate that Customer's terms control or any additional or different provisions in a Customer's electronic business portal. ECM Industries LLC's failure to object to any provisions or terms from Customer will not be a waiver or amendment of any of the provisions of this Agreement. If Customer's purchase order or other correspondence contains terms or conditions in addition or contrary to this Agreement, ECM Industries LLC's acceptance of Customer's order shall not be construed as assent to any such additional terms and conditions and will not constitute a waiver by ECM Industries LLC of any of this Agreement. In the event this Agreement conflicts with any previous agreement or any other purchase documents between the parties, then this Agreement shall take precedence.

**GOVERNING LAW.** This Agreement and any claim, dispute, or controversy arising from or relating to this Agreement or Customer's purchase of any Products shall be governed by the laws of the State of Wisconsin, without regard to its conflict of laws rules. The parties specifically waive application of the UN Convention on Contracts for the International Sale of Goods. Customer irrevocably consents to personal jurisdiction of the state and federal courts in and for Waukesha, County, Wisconsin, and irrevocably waives any claim it may have that any proceedings brought in such courts have been brought in an inconvenient forum.

**MISCELLANEOUS.** No amendment to or modification of this Agreement, in whole or in part, will be valid or binding unless it is in writing and executed by authorized representatives of both parties. If any provision of this Agreement should be found to be void or unenforceable, such provision will be stricken or modified, but only to the extent necessary to comply with the law, and the remainder of this Agreement will remain in full force and will not be terminated. No course of dealing between the parties shall amend, modify or supplement any of the provisions hereof. No waiver by ECM Industries LLC of a breach of any term of this Agreement shall not be construed as a waiver by ECM Industries LLC of

any other breach of this Agreement. ECM Industries LLC reserves the right to update this Agreement at any time, effective upon posting an updated version at [www.powerprodllc.com/terms](http://www.powerprodllc.com/terms); however, Customer's rights and obligations shall be as provided in the version of this Agreement provided to Customer or made available to Customer at the time of its purchase of Products. Customer shall not assign any order or any interest herein without the prior written consent of ECM Industries LLC. Any actual or attempted assignment without ECM Industries LLC's prior written consent shall entitle ECM Industries LLC to cancel such order upon notice to Customer. Notices to ECM Industries LLC should be in writing sent by tracked next-day delivery service to: ECM Industries LLC, N85 W12545 Westbrook Crossing, Menomonee Falls, Wisconsin, 53051, Legal Department. All rights, remedies and powers of ECM Industries LLC are cumulative and may be pursued or enforced in any manner or order. ECM Industries LLC. Terms of Sale - Revision Date: 4.22.12