



## DELTA VALVES AND CONTROLS LIMITED

### TERMS OF TRADE

#### 1 Interpretation

- (a) "Delta", "we", or "us" means Delta Valves And Controls Limited (company number 553737) and our assigns and successors in title;
- (b) "The Customer", or "you" means the person, party or entity that we supply Goods and/or Services to.
- (c) "Goods" means the products we supply to you, and "Services" means any services we supply to you.
- (d) "Including" and similar words do not imply limitation.

#### 2 Ownership and Risk

- (a) Title, property and ownership in all Goods remains with us until such time as all amounts owing by you to us are paid. This reservation of title is separate to the security interest we have in products pursuant to clause 5 below, and also any security interest that arises under the Personal Property Securities Act 1999 ("PPSA").
- (b) Despite title, property and ownership in Goods remaining with us, and us having a security interest in Goods, risk passes to you at the time which is the earlier of either you taking possession of the Goods, or your agent taking possession of the Goods or where the Goods are received by a carrier for delivery to you.
- (c) Until title, property and ownership passes to you, you shall hold any Goods in trust for Delta, and store and sell them in a manner to enable them to be identified and cross referenced to particular invoices.
- (d) Unless otherwise notified in writing, where Goods are sold to you as inventory for re-supply, you are authorised to sell the Goods in the ordinary course of your business, but you must keep the proceeds of any Goods sold in a separate account in trust for Delta.
- (e) You must not resell or part with possession of any Goods that we supply for your own use before you have paid for it in full, unless we have given your written consent.

#### 3 Delivery

- (a) It is for you to forthwith take possession of Goods and not for us to send them to you. Delivery shall be at our place of business.
- (b) The expenses of and incidental to putting the Goods into a deliverable state for transit shall be borne by us.
- (c) Where we agree to send the Goods to you at your expense then, delivery of the Goods to a carrier, either named by you or failing such naming, to a carrier at our discretion for the purpose of transmission to you, is deemed to be a delivery of the Goods to you. Unless you require otherwise in writing, we will make such contract with the carrier at limited carrier's risk within the meaning of the Carriage of Goods Act 1979 and you are responsible to take all steps to insure the Goods during carrying against loss due to any cause or deterioration.
- (d) Where there is no agreement that we will send the Goods to you, delivery to a carrier at limited carrier's risk at your expense is deemed to be delivery to you.
- (e) We are not liable to you in any respect connected with the non-delivery or late delivery of Goods to you, however that delay or non-delivery was caused.
- (f) If you have a claim that any of the Goods are damaged, or were not the Goods you ordered or there is a discrepancy between the order and the Goods received, any and all notifications must be made to us within 24 hours of the date of delivery and also to the carrier within that time. If you do not make such a claim within that timeframe, you are deemed to have accepted delivery of the Goods. You acknowledge that such a claim must be made within that period of time because otherwise it is difficult for us and/or your carrier to respond to any claims and investigate the claim made by you.

#### 4 Orders and Prices

- (a) Other than quoted prices, all prices are subject to alteration without notice. We may agree otherwise, but are not obligated to do so.

- (b) Any quoted prices provided by us to you are only valid for thirty days after the issue of the quote and are also based on the rates and charges in effect as at the date of quotation. If there is an increase in charges or costs to us, we will advise you of increases to prices and provide an amended quotation to you. You will have the option of accepting the amended quote or cancelling the order.
- (c) We can withdraw a quotation if we become aware that the Goods offered by us may not meet your specifications or requirements.
- (d) Any quoted prices will cease to be binding on us if you request any variations to orders. You agree to pay to us when demanded any and all costs, charges, fees and other expenses which are a consequence of you requesting a variation.
- (e) In addition to the quoted price you must pay to us when demanded, any and all Government duties, levies, import taxes (including Goods & Services Tax) in respect of the Goods or Services.
- (f) **Cancellations:** Once an order is received and accepted by us, it cannot be cancelled by you. We are entitled to charge you for any and all costs, expenses and/or charges suffered and/or incurred by us (including materials, handling fees and labour) connected with any cancellation up to the date on which we agree to accept (which we are not obliged to) your cancellation.

## 5 Payments

- (a) Unless we have agreed in writing to extend credit to you, you must pay for all Goods in full before delivery or collection and in full for Services before we commence the Services.
- (b) Where we have agreed to extend credit to you, you must pay all amounts invoiced by us in full by the 20th day of the month following the date of invoice. You are not entitled to deduct or withhold any amounts whatsoever for any reason. Your payment is made only when funds have fully cleared through the banking system into our bank account.
- (c) If you have not paid us in full by the due date, we may charge you interest on the unpaid overdue balance at the rate of 5% per annum above the current overdraft rate charged by our bankers compounding on a daily basis, and we may charge costs (including collection costs and legal costs on a solicitor-client basis) and suspend delivery of further goods or performance of further services until the account is paid.
- (d) Payments which you make to us will be applied first to any amount owing in respect of service work or labour, then to payment for any Goods which have been purchased as inventory and which have been sold by you, then to payment for Goods supplied by us which have not been sold by you.
- (e) Notwithstanding clause 5(b) above, all payments shall immediately become due and payable to Delta if any of the following events occurs (1) we reasonably believe that the information which you have given us in your application for credit is not correct or no longer correct, and you have failed to give us correct information within 5 days of our request, (2) without our consent you sell or otherwise dispose of any Goods which has not been paid for, (3) if you become insolvent, commit any act of bankruptcy, or if a receiver, receiver and manager, liquidator, administrator or statutory manager is appointed over any of your assets or undertaking, (4) if you fail to comply with any of the provisions of clause 4, or if you make or attempt to make an arrangement or composition with creditors.
- (f) Where Delta reasonably believes that any collateral is at risk or that you are or will be in breach of any part of these terms, Delta or its agent may enter your premises without further notice to you or any other person, to remove any Goods which are the property of Delta, including Goods which are installed in, affixed to or attached to other Goods. You grant us an irrevocable licence and right to enter into any such premises at any time. You will promptly and fully Delta against any and all costs, charges, expenses, costs and/or claims suffered or incurred by Delta in respect of its exercise of rights under this clause 5(f).

## 6 Security Interests

- (a) Separate to our reservation of title, as security for any and all obligations that you owe us, you grant us a security interest in the Goods that we have supplied to you - whether or not they have become accessions to other goods or processed or commingled into other goods.
- (b) You agree that you will do all acts necessary and provide us on request all information we require to register a financing statement over the Goods and their proceeds, and that you will advise us immediately in writing of any changes to that information. You waive all rights to receive a copy of any verification statement of a financing statement. The Goods subject to the security interest will be described on our invoices.
- (c) You agree that you will supply Delta, within 2 business days of its written request, with copies of all security interests registered over your personal property, and you authorise Delta as your agent to request information from any secured party relating to any security interest which is held in any personal property which is or has been in your possession or control.

- (d) You agree that Delta may require you to pay all costs, including legal costs on a solicitor client basis, associated with the registration of a financing statement, or the discharge or amendment of any financing statement registered by Delta, whether or not the change was initiated by you.
- (e) If we repossess Goods under these terms, we may retain those Goods or dispose of them without notice or statement of account to you or any other person, and, after deducting reasonable costs of sale, we may credit any surplus by way of setoff against any sums owing to us. We will not be obliged to reinstate any agreement or re-supply any repossessed inventory or provide you with a statement of account.
- (f) You authorise us to search the Personal Property Securities Register at any time for any information about you or (if you are a company) your parent or associated companies.

## 7 Return of Goods

- (a) Goods may only be returned for credit if we have agreed in writing, and they are received by us in perfect condition within 14 days of the date you receive the Goods. Returned goods must be sent at your expense, with a copy of the original packing slip or invoices, to our premises at the place where the order was placed. A restocking fee may be charged by us.

## 8 Delta Warranties

- (a) Where the Consumer Guarantees Act 1993 applies to the supply of Goods or Services by us to you, you may have additional rights under that Act.
- (b) Subject only to clause 8(c) below and any statutory obligations or warranties that cannot be contracted out of and are mandatory, all warranties descriptions representations and/or conditions that could apply to the supply of the Goods or Services (whether by implication, by trade customer or otherwise) are excluded whether they relate to merchantability, fitness for purpose or otherwise. It is your sole responsibility to assess whether the Goods or Services are suitable and/or fit for your purposes.
- (c) Delta's sole liability is to replace or repair (for us to choose in our sole and subjective opinion) any Goods supplied to you which are accepted by Delta as being outside standard industry tolerances. This is provided that you notify Delta in writing of any such defect within 7 days of delivery and return faulty goods to Delta at your cost. Goods which are manufactured within standard industry tolerances will not be considered defective and will not be repaired or replaced.
- (d) Despite any other provisions in these terms or elsewhere, Delta will have no obligations to you whatsoever if there has been damage to or misuse of the Goods caused by you or any third party, or if the Goods have been used for non-specified purposes, or if the Goods have been installed in corrosive or salty atmospheres, or if there has been inadequate or inappropriate packaging, cleaning or maintenance of the Goods, or if there has been unauthorised repairs or modifications to the Goods, or if processes including cleaning or painting have been applied to the Goods, or if fixings or fittings not authorised by Delta have been applied to the Goods.
- (e) Where Goods are subject to a separate manufacturer's guarantee, Delta will pass on the benefit of that guarantee to you at your cost, without itself being directly liable to you, except where otherwise notified to you in writing.
- (f) You will not be entitled to the benefit of any warranty if any sum that you owe Delta for any reason is overdue.
- (g) Where the Goods or Services that you acquire from Delta are not of a kind ordinarily acquired for personal household or domestic use or consumption, or where you acquire, or hold yourself out as acquiring, the goods or services for the purposes for a business, the provisions of the Consumer Guarantees Act 1993 and the conditions, warranties and guarantees set out in the Sale of Goods Act 1908 or implied by common law will not apply and are excluded from these terms of trade.

## 9 Customer Warranties

- (a) If you acquire any Goods or Services from Delta for re-supply as, or incorporate or attach any Goods or Services acquired from Delta into, goods or services ordinarily acquired for personal household or domestic use or consumption ("Consumer Products") you warrant that:
  - (i) if you supply the Consumer Products directly to an end user/consumer you will do so using terms and conditions of supply which exclude liability for any claims under the Consumer Guarantees Act 1993; and if your customer acquires the goods for re-supply, your customer and each person in the distribution chain will exclude liability in its contract for supply for any claims under the Consumer Guarantees Act 1993, but in each case only where the end user/consumer acquires the Consumer Products for business purposes.
- (b) You agree to indemnify Delta against any failure by you, your customers or any person in your distribution chain to properly contract out of liability to business end users/consumers under the Consumer Guarantees Act 1993.

## 10 Limitation of liability

- (a) **Force Majeure:** Delta will not be liable for any losses of any kind or any delay in supplying Goods or Services which are caused in whole or in part by force majeure including (by not limited to) any act of God, natural disaster, flood or earthquake, strike, lockout, fire, war, civil commotion, network service failure, electricity or gas shortage, inability to obtain products or supplies including the imposition of any export or import bans, or any other cause beyond its reasonable control. Delta shall not be required to settle a strike or lockout or other industrial disturbance against its wishes in order to benefit from this clause.
- (b) In no event or circumstance will Delta be liable to you for any and all costs of returning goods to Delta or to any manufacturer, or any loss of profits or any indirect, incidental, consequential, special, punitive or exemplary damages or losses which you incur or suffer arising from or connected with anything we have done or failed to do, or otherwise in connection with the Goods and/or Services. This includes (but is not limited to) delays in manufacturing or delivery, or faulty or delayed installation, or unreasonable use, or negligence (including a failure to do something which should have been done or to prevent something from happening), or faulty specifications and design, or incorrect hydrostatic testing of the Goods and/or faulty materials or components of the Goods.
- (c) Where the exclusion in clause 10(b) cannot be relied upon by us, Delta's liability to you arising from or connected with the supply of Goods or Services is limited to a monetary amount which is equal to the price paid for the particular Goods or Services supplied which are subject to a claim by you.
- (d) As you are contracting with Delta, none of Delta's employees, contractors, agents, any manufacturer(s) or developer of the Goods or any of their materials or components or any suppliers of services, will be liable to you for loss or damage of any kind however that loss or damage is caused or arises.

## 11 Intellectual property rights

- (a) Neither Delta nor its suppliers transfers any right, title or interest in any copyright, trade marks, or other intellectual property rights to you relating to any of the Goods or the processes by which they are applied to you.

## 12 Information

- (a) You irrevocably authorise Delta to use any information that you supply for credit, administration, service, marketing and/or debt collection purposes. You have the right of access to, and to ask for correction of, your information.
- (b) You irrevocably authorise Delta to contact, and obtain from, any person or company any information Delta requests in response to your application for credit and/or other enquiries and you authorise Delta to search any public register (including the Property Securities Register) for any information about you (or, in the case of a company) your parent or associated companies.

## 13 General Conditions

- (a) These terms of trade prevail over any course of dealings between us, any industry standard terms and also prevail over any of your terms and conditions as well.
- (b) Delta's terms of trade include all technical schedules and operating procedures advised to you by Delta from time to time, including on its website. If there is any conflict between these terms and the schedules, these terms will prevail.
- (c) Delta reserves the right to change these terms of trade from time to time by giving you reasonable notice in writing. If you order Goods or Services from Delta after being made aware of the changes, you are deemed to have accepted those changes.
- (d) If Delta fails to enforce any terms or to exercise its rights under these terms of trade at any time, Delta has not waived those rights.
- (e) If any provision of these terms of trade is held to be invalid or unenforceable for any reason, the remaining provisions shall remain in full force and effect and the parties shall adjust their respective rights and obligations in accordance with the spirit and intent of the parties as shown by these terms of trade.
- (f) Any agreement between you and Delta is governed by the laws of New Zealand. You agree that any dispute is subject to the exclusive jurisdiction of the New Zealand courts although Delta reserves the right to commence any proceedings against you in any other court.