

DELTA VALVES AND CONTROLS LIMITED

TERMS OF TRADE

The terms of trade set out below govern all of the supplies of goods and services from Delta Valves and Controls Limited ("Delta", "we", "us") to the Customer ("you"). They will replace any terms and conditions contained in any document used by you and purporting to have contractual effect, and your acceptance of any goods or services from Delta indicates your acceptance of these terms of trade. These terms of trade are effective from 1 November 2002 and replace all earlier terms of trade between you and Delta.

1. Delivery and risk

- 1.1 You are responsible for insurance and risk in the goods from the earlier of the time they are received by a carrier for delivery to you, or the time they are received by you or your agent.
- 1.2 You agree to pay all delivery costs. If we deliver any order in parts, then each delivery is a separate contract.
- 1.3 You do not have the right to possess goods until they are delivered to you or collected by you. Where you ask us to deliver goods directly to another person, that person takes possession of the goods for you as your agent.
- 1.4 All claims for shortage or delivery damage must be made to the carrier and to Delta within 5 business days of the date of delivery.
- 1.5 We will make every effort to ensure delivery of goods, or performance of services, is on time but will not be liable to you for any loss or damage arising in any way from any delay in delivery or performance, however that delay was caused.

2. Quotations, Orders and Prices

- 2.1 Unless Delta agrees otherwise in writing, all prices other than quoted prices are subject to alteration without notice.
- 2.2 Quoted prices are based on the rates and charges in effect at the date of quotation, and may be increased to reflect any increase in between that quotation date and delivery date. You agree to pay for all costs of variations requested by you.
- 2.3 You agree to pay goods and services tax and any other government duties, levies or taxes in respect of the goods or services.
- 2.4 Orders may be cancelled only if you give written notice to Delta and Delta agrees in writing to the cancellation. Delta may charge you for costs (including materials, handling fees and labour) which have been incurred up to the date on which Delta agrees to accept your cancellation.

3. Payments and property

- 3.1 Unless we have agreed in writing to extend credit to you in another manner, you must pay for all goods in full before delivery or collection.
- 3.2 Where we have agreed to extend credit to you, you must pay in full, without deduction or setoff, by the 20th day of the month following the date of invoice. Your payment is made only when funds have fully cleared through the banking system into our bank account.
- 3.3 If you have not paid 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.
- 3.4 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.
- 3.5 Property and ownership in any goods supplied by us, whether in their original form or incorporated in or attached to another product, will not pass to you but will remain with Delta until Delta receives payment in full of the purchase price of the goods and all other amounts that you owe to Delta for any reason.
- 3.6 Until property 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.
- 3.7 Unless otherwise notified in writing, where goods are sold to you an 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.
- 3.8 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.
- 3.9 Notwithstanding clause 3.2 above, all payments shall immediately become due to Delta if 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, if, without our consent you sell or otherwise dispose of any equipment, which has not been paid for, if you become insolvent, commit any act of bankruptcy, or if a receiver, liquidator or statutory manager is appointed over any of your assets or undertaking, 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.
- 3.10 Where Delta reasonably believes that any collateral is at risk or that you are or will be in breach of any part of clauses 3 or 4 of this agreement, 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, and you indemnify Delta against all costs and claims in respect of its exercise of rights under this clause 3.

4. Security Interests

- 4.1 If we extend credit to you or if you owe us money for any reason, you agree to 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. 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 and services subject to the security interest will be described on our invoices.
- 4.2 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.
- 4.3 You agree that Delta may require you to pay all reasonable costs, including legal costs on a solicitor client basis, associated with the discharge or amendment of any financing statement registered by Delta, whether or not the change was initiated by you.
- 4.4 If we repossess goods under this agreement, 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 this agreement or re-supply any repossessed inventory or provide you with a statement of account.
- 4.5 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.

5. Return of Goods

- 5.1 Stock goods may be returned for credit only 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.

6. Delta Warranties

DELTA VALVES AND CONTROLS LIMITED

36b Apollo Drive, Mairangi Bay, Auckland, New Zealand. PO Box 305-465, Triton Plaza, North Shore City 0757
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- 6.1 Where the Consumer Guarantees Act applies to the supply of goods or services under these terms of trade, you may have additional rights under that Act.
- 6.2 Delta warrants that it will replace, or at its option repair, goods supplied under this agreement which are accepted as defective, provided that you notify Delta in writing of any 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.
- 6.3 Where goods are subject to a separate manufacturer's guarantee, Delta will pass on the benefit of that guarantee to you, without itself being directly liable to you, except where otherwise notified to you in writing.
- 6.4 Any warranty may be voided by damage to or misuse, of goods, negligent installation or operation, installation in corrosive or salty atmospheres, the use of goods for non-specified purposes, inadequate or inappropriate packaging, cleaning or maintenance, unauthorised repairs, modifications or the use of fixings or fittings not authorised by Delta.
- 6.5 You will not be entitled to the benefit of any warranty if any sum that you owe Delta for any reason is overdue.
- 6.6 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.

7. Customer Warranties

7.1 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:

- (a) 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.

7.2 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.

Limitation of liability

7.3 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.

7.4 Subject to clause 7.1, Delta's liability shall be limited to the value of any goods or processing services supplied, and non of Delta, its employees, contractors and 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. The limitation of liability includes, but is not limited to, costs (including costs of returning goods to Delta or to any manufacturer), consequential loss, loss of contracts, loss of profits and damage caused by or arising from delays in manufacturing or delivery, faulty or delayed installation, unreasonable use, negligence (including a failure to do something which should have been done or to prevent something from happening), faulty specifications and design, and faulty materials or components of the goods.

8. Intellectual property rights

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

9. Information

9.1 Delta will use any information that you supply for credit, administration, service and marketing purposes. You have the right of access to, and to ask for correction of, your information.

9.2 You authorise any person or company to provide Delta with any information it may require in response to your application for credit and/or other enquiries and you authorise Delta to search the Property Securities Register for any information about you (or, in the case of a company) your parent or associated companies.

10. General Conditions

10.1 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.

10.2 Delta reserves the right to change these terms of trade from time to time by notice to you in writing.

10.3 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.

10.4 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.

10.5 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.

Signed for Customer

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Signature

Date: / / 20

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Position

.....
Customer name