

# Terms and Conditions of Purchase

## 1. ACCEPTANCE

- 1.1 These terms and conditions shall govern the manufacture and supply of all goods by you to us ("Goods") and shall prevail over all other terms of sale and purchase.
- 1.2 Your acknowledgement shall not refer to your Terms and Conditions and shall accept these terms for the Order, shall agree the price and the delivery date.

## 2. PROCEDURE

- 2.1 We shall not be liable for any Order or amendments thereto other than those issued or confirmed on our official printed Order or amendment forms, signed by a person authorised on our behalf.
- 2.2 The Order is given to you on the basis that you will invoice Goods at the price stated on the Order and will deliver on the date stated on the order and to the quality required. If for any reason you intend to submit an invoice whose value is greater than that of the Order, your reasons for doing so must be notified to us 21 days prior to invoicing and if such increase is accepted by us such acceptance must be signed by a person authorised on our behalf. Failure to do so will result in payment only of the value stated on the Order.

## 3. CANCELLATION/POSTPONEMENT

- 3.1 We reserve the right at our option to cancel the Order or any part of it and/or we shall be entitled to reimbursement in respect of all loss and /or expense which results directly or indirectly by reason of:
  - a) the failure to provide us with an acknowledgement in accordance with Condition 1.2.;
  - b) the failure by you to deliver, or delay by you in delivering materials or Goods, or failure to complete work, by the date specified in the order;
  - c) the circumstances set out in Condition 5 below;
  - d) the failure by you to comply strictly with the description, specification and drawings relating to the materials or Goods to be supplied or work to be carried out and/or the failure to comply with British Standard Specifications and Conditions where applicable;
  - e) the materials or Goods to be supplied by you or work to be carried out by you being below the specified standards or failing to pass such inspection or test as may be required by us or by our customer or his agent or by any government department concerned.
  - f) the failure by you to demonstrate compliance to the requirements of a quality plan where such has been agreed or the failure by you to supply documentation demonstrating conformity to the specified standards when such documentation had been requested as part of the Order.
- 3.2 If you become bankrupt or insolvent or have a receiving order made against you or compound with your creditors, or being a corporation commence to be wound up, not being a member's voluntary winding up for the purpose of reconstruction, or carry on your business under a receiver for the benefit of your creditors or any of them we shall be at liberty:
  - a) to terminate the contract forthwith by written notice to you or to the receiver or liquidator or to any person in whom the Contract may become vested and to collect forthwith all our material sent to you for further processing (or assembly), or
  - b) to give such receiver, liquidator or other person the option of carrying out the contract subject to his providing a guarantee for the due and faithful performance of the contract up to an amount to be agreed.
- 3.3 In the event of any strike, lockout, fire, explosion or accident or of any stoppage of our business or work beyond our control which may prevent or hinder the use of the Goods or work the subject matter of the Order, the delivery of such Goods or the completion of such work and the payment therefore may be suspended or postponed at our option until the circumstances preventing or hindering the use of such Goods or work have ceased.
- 3.4 You shall immediately notify us of any anticipated delay in delivery, despatch or completion and, without prejudice to any other right on our part, we shall be entitled to cancel the Order under Condition 3.1 if such delay is in our opinion likely to jeopardise the purpose of the Order.

#### **4. SUB-CONTRACTING OR ASSIGNMENT**

No part of the Order is to be sub-contracted or assigned by you without our prior consent. Where such consent is given it is conditional upon your sub-contractor or assignee accepting these terms and conditions and any other terms agreed between us. In the case that you have sub-contracted or assigned part of the Order, it is your responsibility to ensure any subcontracted or assigned work has been carried out to the specified standards.

#### **5. INSPECTION**

Our inspector or representative and any inspector or representative of our customer or his agent or of any government department concerned shall be entitled on our authority to inspect or test the Goods or work which are the subject matter of the Order at any reasonable time at your works or at the works of any of your sub-contractors or assignees. If specified by us you will give us adequate notice of your tests that we shall be entitled to attend. You will provide us with such test certificates as we may require. Such inspection does not relieve you of any liability nor does it imply acceptance of the Goods or work that are the subject matter of the Order.

#### **6. DELIVERY/TRANSPORT/PACKING**

- 6.1 Unless otherwise agreed, any time or period given for delivery, despatch or completion shall be of the essence.
- 6.2 All Goods supplied against the Order must be adequately protected against damage and deterioration in transit and delivered carriage paid, and be in accordance with our instruction (if given) and must bear the description and the quantity of the contents and our Order number on the package thereof. The Goods shall be at your risk until delivered to us at the point designated on the Order unless we otherwise agree on our official Order form. You shall deliver Goods DDP (Incoterms 2000) to the point designated on the Order unless we otherwise agree in writing.
- 6.3 We will accept no liability for packing materials or cases unless previously agreed to by us.
- 6.4 No concession on our part with respect to delay in delivery, despatch or completion shall be construed as a waiver of our rights and remedies, unless we specifically so agree.

#### **7. WARRANTIES**

You warrant that the Goods shall comply strictly with any specifications, drawings or other data that we may provide to you in respect of the Goods and packaging for such Goods, and in any event the Goods shall be of good workmanship and shall comply with all relevant British or other standards and regulations

#### **8. PASSING OF PROPERTY**

The property in the Goods ordered shall pass to us on delivery at the place specified in the Order or as otherwise agreed, without prejudice to any right of rejection or other right which may accrue to us or may have accrued to us under these Conditions or otherwise.

#### **9. PAYMENT**

- 9.1 We shall pay the price for the Goods to you 60 days after the end of the month in which you issue an invoice to us having completed delivery of all goods and documentation. A delivery will not be considered complete until we have all required documentation and goods of the right quality.
- 9.2 In the event of your failure to:
  - a) send on the day of despatch for each consignment such advice(s) or despatch and invoices(s) as may be indicated in the Order, or
  - b) send a monthly statement of account by the 10<sup>th</sup> of each month quoting the invoice numbers applicable to each item thereon, or
  - c) mark clearly our Order number on the consignment package, packing notes, advice notes, invoices, monthly statements and all other correspondence relating thereto;we shall not be liable for any delay in payment nor shall our right to receive a prompt payment discount from you be forfeited.

**10.** All payments made will be without prejudice to our rights should the Goods, materials or services prove unsatisfactory or not in accordance with our order or instructions.

#### **11. OWNERSHIP OF TOOLS ETC**

11.1 All tools, patterns, materials, drawings, specifications and other data provided by us or paid for by us in connection with the Order or previous Orders and will remain at all times our property and are to be surrendered to us on completion of the Order and are to be used by you solely for the purpose of completing the same. You shall keep all tools and material supplied by us in good working condition and clearly marked as the property of Delta Controls. All tools will be regularly examined and the condition reported to Delta and at least once per year. Delta requires that any deterioration in tool condition due to wear and tear should be highlighted to Delta and repairs undertaken by the Supplier to keep the tooling in safe and useable condition and producing parts that meet the requirements of the drawing and specifications. Tooling which may be coming to the end of its life needs to be advised to Delta in sufficient time to agree and finalise any repairs or refurbishment or replacement of the tooling. Any damage to tooling while in the possession of the supplier shall be the responsibility of the supplier. Tooling may not be moved or transferred to another site or location or supplier without the prior written agreement of Delta.

#### 11.2 OWNERSHIP OF PATENTS/COPYRIGHTS ETC

All intellectual property rights in our patterns, drawings, specifications or other data shall remain our property together with the rights to and in any patents, copyrights or registered designs therein or which may arise therein.

11.3 Any information we disclose to you, including the contents of an Order shall be treated as confidential between yourselves and us and shall not be disclosed by you or any sub-contractor or assignee or yours to any third party or used by you or any such sub-contractor or assignee for advertisement, display or publication without our prior consent. This Condition shall survive termination of all and any contracts between us.

11.4 You agree neither to quote nor supply parts made with our tools or materials or to our patterns, specifications, designs, or drawings to any third party without our prior consent.

11.5 You will keep us indemnified (except in respect of designs provided by us) against all claims of whatsoever nature (including those for royalties, damage or other losses) arising from infringement of a third party's intellectual property rights by the Goods or any articles or processes contained therein.

### 12. DEFECTIVE MATERIAL/WORKMANSHIP

12.1 You will keep us indemnified in respect of all loss and /or expense which results during or after proper use directly or indirectly from defective materials or Goods or defective workmanship or design supplied by you and in addition you will repair, replace or reinstate at our option the defective item or items free of charge. Should you wish to submit a concession to Delta to accept goods that do not exactly meet the drawing or quality requirements Delta will assess the concession and advise if a charge will be levied for the tests or other costs that may be involved in validating the goods are fit for purpose.

12.2 You will be provided with Non Conformance Reports whenever we deem that your goods did not meet the specified standards. It is your responsibility to fill in the Preventive and Corrective Actions section of our Non Conformance Report and return the form to us within 10 working days, advising us on the actions being taken by you to resolve the issues concerned with the goods on the Order, and to inform us of the root cause of the defect and advise us of the actions being taken prevent the reoccurrence of such issues from future batches. Should the supply by you of defective parts cause Delta to put at risk or delay the supply of Delta Instruments to their customers Delta will advise the Supplier and the Supplier shall use best endeavours to replace or repair the defective parts in the most time effective manner and ship to Delta at the Supplier's cost to minimise the delay or disruption to Delta's business.

12.3 You will keep us indemnified against any damage to our property (including any materials, tools or patterns sent to you for any purpose) and against any claims for loss or injury to any person or to the property of any person by reason of your negligence or of any act or omission on the part of your employees, sub-contractors, assignees or agents arising out of the execution of the Order.

### 13. PUBLICITY

You shall use neither the Order nor our name for advertisement or publicity purposes without our prior written consent.

### 14. SAFETY

You shall inform us prior to or on delivery of any health or safety hazards relating to the Goods and of any precautions that should be taken in connection with their handling or use.

### 15. NOTICES AND SERVICE

Any notice, consent, order, acknowledgement or other document required to be given under any agreement between us shall be in writing and shall be delivered to the other party's last address either by hand, pre-paid registered post, email or by fax. A notice, consent, order, acknowledgement or other document shall be treated as having been received on the date delivered, emailed or faxed (if such email or fax is evidenced by a confirmation of transmission), and no later than 2 working days after the date upon which it has been posted within the United Kingdom or 15 working days if posted outside the United Kingdom.

**16. LAW AND APPLICATION**

These Conditions shall have precedence over any printed conditions appearing on any quotations or acceptance form, delivery form or other documents or letter emanating from you and such conditions shall have no effect whatsoever except insofar as they confirm the terms of the Order.

**17. LAW OF CONTRACT**

The Order shall be construed in all respects in accordance with English Law. Nothing in these Conditions shall prejudice any condition or warranty (expressed or implied) or right or remedy to which we are entitled in relation to the material or Goods ordered by virtue of statute or common law.

**18. ARBITRATION**

All disputes arising in connection with this Agreement (including but not limited to the breach termination or validity thereof) shall be finally settled by arbitration under the Rules of the London Court of International Arbitration by one arbitrator appointed in accordance with the said Rules and the venue for such arbitration shall be London.

**19. RIGHTS OF THIRD PARTIES**

A person who is not a party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement, but this shall not affect any right or remedy of a third party which exists or is otherwise available apart from that Act.