

# Standard Conditions of Sale

## 1. DEFINITIONS

"The Company" means Delta Controls Limited.

"The Buyer" means the person, firm or company placing the order.

"The Goods" means the goods, articles and materials which are to be supplied by the Company and shall include accessories and services when specified.

"The Contract" means any contract howsoever made for the Goods between the Company and the Buyer and shall incorporate the Quotation (if any), and these Conditions.

"The Quotation" (if any) means the term as set out therein and shall include these Conditions in so far as they are not expressed varied in the Quotation.

## 2. ACCEPTANCE OF CONTRACT

The Contract is made only when the Company acknowledges in writing the Buyer's order. The Buyer hereby acknowledges that these Conditions apply to the Contract and replace Conditions (if any) which may be printed on the Buyers documentation and any previous terms are superseded. In addition, receipt of the Goods by the Buyer shall be deemed to be conclusive proof that the Buyer has accepted these Conditions.

## 3. VARIATION

No variation of the Contract terms shall be allowed unless such variation is specifically agreed in writing by the Company prior to confirmation of the Buyer's order. Any documentation purporting to add to or vary the Quotation or conditions after the Contract is made shall be of no effect unless specifically arranged by both parties in writing.

## 4. DELIVERY/DELAY/ACCEPTANCE OF GOODS

The place of delivery shall be "ex-works" the Company's place of business unless otherwise quoted. Risk in the goods passes to the Buyer on delivery. Delivery dates are given in good faith and the Company will use its reasonable efforts to adhere to them. Time is not of the essence and the Company shall be under no liability for any loss or damage arising directly or indirectly out of late delivery. Subject to the warranties hereinafter contained, the Buyer shall be deemed to have accepted the Goods as being in conformity with the Contract and shall be bound to pay for them unless written notice of defect or shortage is given within seven days of delivery.

## 5. CARRIAGE

The Buyer shall be responsible for the Goods and any risk loss or damage thereto and insurance thereof from the commencement of despatch or shipment (which shall be "ex-works" the Company's premises unless agreed otherwise in writing). The Buyer shall insure the Goods to their full value against loss or damage and maintain such insurance until the Company has been paid. Where the Quotation includes carriage prior to delivery, the Company will repair or replace free of charge Goods damaged in transit provided the carrier or the Company receive written notification of such damage within three days of delivery, but not otherwise, and provided nothing has been done or not done by the Buyer which might invalidate any claim against the carrier.

## 6. STORAGE

If the Buyer does not make appropriate arrangements to accept delivery within seven days after the date of notification that the Goods are ready for despatch, then the Buyer must arrange and pay for storage and in default the Company may arrange storage at the Buyers expense without prejudice to the terms of payment. If the Company's storage facilities permit, it will store the Goods at a charge of £1 per sq. ft. per week until Goods are despatched and which shall be paid for as if they have been despatched.

## 7. PRICE/PAYMENT

- Prices and instalments are as stated in the Quotation or if not quoted will be those prevailing at the date of despatch of the Goods.
- Payment shall be 30 days from the date of invoice.
- Where it is agreed that the Contract is to be or may be fulfilled by stage payments or deliveries then payment for each shall be invoiced and shall be separately due as in (b) above. If a stage payment becomes overdue then the whole balance shall become due without prejudice to any of the rights hereunder.
- If the Buyer fails to pay any amount payable by it under this Agreement the Company shall be entitled to charge the Buyer interest on the overdue amount in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 as amended or re-enacted from time to time.
- Prices are exclusive of VAT unless otherwise stated and the money of the account is Sterling UK unless otherwise agreed.

## 8. TAXES

The amount of any and all taxes or other government charges upon the production, shipment or sale of the Goods shall be added to the price and paid by the Buyer.

## 9. WARRANTIES

- The Company warrants that the Goods shall comply with any agreed specification and will free of charge make good by repair, or at its option by the supply of a replacement, defects which upon delivery or under conditions of proper use appear in the Goods manufactured by it and which arise solely from faulty materials or workmanship of the Company or by the Company's failure to comply with the specification provided that the Goods are returned carriage paid to the Company's place of business within 12 months after the date of delivery by the Company. If the inspection of the Company does not disclose a defect within the terms of the warranty the Company's regular charges will be payable. No claim will be accepted for expenditure in altering or repairing any Goods, without prior written approval of the Company.
- The Company's liability under the clause is in lieu of any warranty or conditions implied by law as to the quality or fitness or suitability for any particular purpose or satisfactory quality or condition of the Goods and except as provided in the clause the Company shall not be under any liability whether in contract tort or otherwise in respect of defects in the Goods or packaging thereof or for any injury damage or loss resulting from such defects or from work done in connection therewith.
- The Buyer shall be responsible for ascertaining if the Goods are suitable for the purpose required.
- Without prejudice to the generality of the foregoing the Company shall not be liable for:-
  - Any economic or consequential loss or damage or loss of profit or production suffered by the Buyer or third parties.
  - Any damages in excess of the total price of the Contract.
  - Any loss or damage against which it is customary in the trade for the Buyer to insure.
- In the event of the Company supplying Goods not designed and manufactured by it such goods, equipment or products will only carry such warranty as is provided by the manufacturer and no further liability therefor shall apply to the Company.

- Nothing in the above sub-clauses is intended to reduce or limit the minimum liability in respect of the Goods imposed by statute on the Company arising out of death or injury to persons or otherwise and accordingly the above sub-clauses shall be applied and interpreted subject to this provision.

## 10. PROPERTY IN GOODS

- The property in the Goods shall remain in the Company until such time as the Company has been paid in full for the Goods and until all other outstanding accounts due from the Buyer to the Company have been paid in full.
- Whilst the Goods are being stored awaiting sale or further processing or where they have been processed but remain identifiable and capable of severance the Buyer shall label or distinguish them or shall maintain records in such manner as the Goods can be identified as having been supplied by the Company.
- If the Buyer shall default in making due payment or (i) if an administrative receiver or administrator is appointed over any of the assets or undertaking of the Buyer or (ii) if a liquidator is appointed or (iii) if a winding-up order is made against the Buyer or (iv) if the Buyer goes into voluntary liquidation or calls a meeting of or makes an arrangement or composition with creditors or (v) if distress or execution is threatened or levied on the Goods the Company shall be required without prior notice to enter upon any premises of the Buyer to repossess and remove or at the Company's election to label mark or list the Goods.

## 11. INDEMNITY

- The Buyer will indemnify the Company against all claims, costs and expenses resulting from any infringement of any patents, registered trade marks or trade names, registered designs, unregistered design rights, copyright, or any passing off action, or licence agreements and assist in defence of any action brought against the Company insofar as any such infringement is due to designs or specifications stipulated by the Buyer.
- Without prejudice to (i) above Company reserves the right to cease work on any order being carried out if it should have reason to believe that the Goods are subject to an infringement claim, in which case the property in the work done shall not pass to the Buyer (except at the Company's discretion) and the Company shall be entitled to be paid for work done and materials supplied.

## 12. DESIGNS AND DRAWING

Where designs are prepared by the Company for the Buyer, acceptance of the Contract by the Company is conditional upon such designs having been previously approved in writing by the Buyer and where the Goods are manufactured to designs submitted by the Buyer, the Company undertakes to provide them in strict conformity with such designs but accepts no responsibility in either case for function or purpose of the Goods. Ownership to the rights of designs and drawings made by the Company pursuant to this Contract shall remain in the Company except where the Buyer has agreed to pay for such rights then ownership will pass to the Buyer on payment in full having been made.

## 13. TESTING

If the Buyer requires to test or to inspect the Goods before delivery the Company reserves the right to stipulate the venue and all expenses shall be paid by the Buyer. An adequate supply of suitable materials for proving and testing purposes must be supplied by the Buyer. If after seven days notice that the Company is to proceed with the tests there is any delay on behalf of the Buyer or its representatives in supplying the materials or in attending such tests, payment shall be deemed to be due as if the tests have been completed and despatch has been made.

## 14. SALES LITERATURE

Unless otherwise specifically agreed in writing by the seller so as to form part of this Contract it is agreed and declared that all descriptions, specifications, performance data, tolerances, illustrations, weights, measurements and dimensions contained in the Seller's catalogues, sales leaflets, price lists or advertising material are for general information only and are not intended as a definitive description of the goods and do not form part of this Contract and further they are subject to modification and variation by the Seller at any time without notice.

## 15. HEALTH AND SAFETY AT WORK ACT

The Company have taken all reasonable practical steps to comply with the requirements of the Health and Safety Act 1974, the Buyer undertakes to insure that all products and equipment supplied by the Company are properly used and further to ensure that the installations and operations of such products and equipment at the place of work should be safe and without risk to health. It is further agreed that the Buyer's written acceptance of the Company's proposals as provided by Clause 3 hereof shall be deemed in the absence of a specific undertaking to incorporate an undertaking by the Buyer to take specific steps sufficient for the purposes of the said act to ensure so far as is reasonably practicable that the products and equipment will be safe and without risk to health when properly used. The Buyer further agrees that in respect of any liability being found to attach to the Company with regard to the positions of the said act arising out of any matter relating to the use of the product and equipment so to indemnify the Company in respect of any costs claims actions or liability arising under the said Act.

## 16. LIEN

Without prejudice to any other rights and remedies which the Company may have under the Contract, the Company shall, in respect of all debts of the Buyer to the Company, have a general lien on all the goods and property belonging to the Buyer in the Company's possession (whether worked on or not) and shall be entitled, upon the expiration of fourteen days notice to the Buyer, to dispose of such goods or property as it sees fit and to apply any proceeds of sale thereof towards the payment of such debts.

## 17. BREACH OF CONTRACT

In the event of any Buyer for whatever reason whatsoever failing within two calendar months either to effect any payment which may be due or remedy any other breach of contract after receiving notice of the Company requesting such breach to be remedied, then the Company may without prejudice to any other rights to be entitled forthwith to suspend performance of or terminate the Contract and the Buyer shall be responsible for the payment of all work done and services rendered to the date of termination regardless of whether the Buyer has received benefit. The Buyer shall pay to the Company at the Contract rate for all work done materials used and goods delivered up to and including the date of termination and shall in addition indemnify the Company in connection with the supply or non-performance of the Contract including the cost of any material, plant or tools used or intended to be used therefor and the cost of labour and other overheads.

## 18. ASSIGNMENT

Any contract made on the basis of these Conditions cannot be assigned without the written consent of both parties.

## 19. LAW OF CONTRACT

Any contract made on the basis of these Conditions and all matters arising therefrom shall be construed and take effect according to the English Law and any action shall be tried in English Courts, or (if the parties agree) any dispute or difference of any kind whatsoever which arises or occurs between the parties in relation to anything or any matter arising under out of or in connection with this agreement shall be referred to arbitration under the Arbitration Rules of the Chartered Institute of Arbitrators.

## 20. 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.