

## Terms and Conditions of Sale

### 1. Governing Terms and Conditions

These are the only terms and conditions which are binding upon a Seller with the exception of those otherwise agreed in writing by the Seller which are imposed by a statute such as the Competition and Consumer Act 2010 (Cth) and which cannot be excluded. Any direction by the Buyer either verbal or written to procure goods or services from the Seller will be deemed as acceptance by the Buyer of these terms and conditions, despite any provisions to the contrary in the direction or any purchase order issued by the Buyer. No variation of the terms shall bind Delta unless agreed to in writing by a duly authorised representative of the Company and no servant agent or officer of Delta has authority to waive this term.

### 2. Definitions

In this Contract:

'Delta' and 'Supplier' means Delta Distribution Pty Ltd ACN 054 651 571

'The Buyer' means the Person named in the relevant Sales Invoice, Packing Slip, Credit Application, or Quotation

'Goods' shall unless a contrary intention appear mean and include the Goods referred to in the Buyer's purchase order or the Supplier's delivery docket, invoice or quotation.

### 3. Quotations

The quotation referred to as the "price" in any quotation is valid for thirty days or such other period as stated therein. An oral quotation is not to be construed as an obligation to sell but merely an invitation to treat and no contractual relationship shall arise therefrom until the Buyer's order has been accepted by the Supplier in writing or until delivery of the Goods has been effected. Where the provision of the Goods referred to in the Quotation are not supplied or provided to the Buyer within three months of the execution of the Contract, the Supplier shall not be obliged to supply the Goods for the contract price specified in the Quotation but shall have the right to re-quote in respect of same. In the event that the Buyer accepts the new quote the price so re-quoted shall be substituted by the Buyer price specified in the quotation. In the event that the Buyer does not accept the new quote, the Buyer and Supplier may cancel the Contract by giving written notice to each other without subjecting itself or themselves to any Common Law action for breach of Contract.

### 4. Payment and Delivery

- a. Payment for Goods shall be made in full, in Australian currency or other currency as stated, with funds deposited into Delta's account not later than 4:00PM on the invoice due date.
- b. '30 days from end of month' means payment by the last day of the month following the month of invoice
- c. Cheques tendered shall not constitute payment until cleared.
- d. If payment is in arrears by more than thirty days liquidated damages may be charged at the rate of 10%.
- e. All orders other than export orders are despatched on an ex-store basis unless otherwise agreed in writing by Delta.
- f. All export orders are despatched on a charges collect, ex store, basis unless otherwise agreed in writing by Delta.
- g. Delta will not be liable for loss or damage occasioned by delay in delivery howsoever caused.

### 5. Passing of Property and Risk

- h. All risk in the Goods shall pass to the Buyer immediately at the time of delivery to the Buyer, into the Buyer's custody or at the Buyer's direction (whichever happens first).
- i. Property in the goods supplied by the Seller to the Buyer under these terms and conditions shall not pass to the Buyer until those goods and other goods have been paid for in full.
- j. Pending such payment the Customer shall hold the goods as bailee and shall store the goods in such a way as to indicate that they remain the property of Delta. The Customer acknowledges that the Supplier shall have an absolute right to retake possession of the goods in the event that the Customer fails to pay for the goods in accordance with the terms and conditions of the contract. The Customer authorises the Supplier by its servants or agents to enter any premises owned, leased or otherwise occupied by the Customer for the purpose of retaking possession of the goods and authorises the Customer by its' servants or agents to use all reasonable force to obtain such possession without exposing itself to any civil action in respect of the exercise of such a right. If the Customer sells the goods the Customer acknowledges that such sale is by the Customer as bailee for and on behalf of the Supplier and agrees that the proceeds of sale pending payment to the Supplier shall be held in trust for the Supplier. Pending title passing to the Customer the Customer shall insure the goods with a reputable insurance office against loss damage and destruction from usual risks, and in the event of the goods or any part thereof being damaged or destroyed the proceeds of such insurance shall belong to Delta for whom the Customer shall hold the same in trust.
- k. The Buyer and Supplier agree that the provisions of this clause apply notwithstanding any arrangement under which that Supplier grants credit to the Buyer.
- l. Each party consents to the other perfecting any security interest under this agreement which arises by operation of the Personal Property Securities Act 2009 (Cth) [PPSA] in any property by registration under the PPSA and agrees to do anything reasonably requested by the other party to enable it to do so.
- m. The parties contract out of each provision of the PPSA which, under section 115(1) of that Act, they are permitted to contract out of, other than:
  - i. sections 117 and 118 (relationship with land laws); and
  - ii. sections 134(1) and 135 (retention of collateral).
- n. Each party waives its right to receive each notice which, under section 157(3) of the PPSA, it is permitted to waive.
- o. Each party waives its rights to receive anything from any other party under section 275 of the PPSA and agrees not to make any request of any other party under that section.

6. Limitation of use Products sold by Delta may not be used, installed or applied on aircraft and the Buyer agrees that the products will not be so used.

7. Right of Cancellation If the Buyer fails to pay the Supplier the contract price in the manner specified in the contract or on the face hereof or if the Buyer commits an act of bankruptcy or executes a Deed of Assignment or enters into a composition or other arrangement with its creditors, or being a company enters into liquidation whether compulsory or voluntary or is placed into receivership or under official management, then the Supplier may without prejudice to any other rights or remedies, thereupon by written notice to the Buyer, determine any contract for the supply of goods. Further the Supplier may at any time terminate the Buyers right to purchase Goods and have such Goods or services provided on credit without the necessity of giving prior notice in the event that any amount remains unpaid by the Buyer more than thirty days after the date of the Suppliers invoice to the Buyer.

8. Cancellation by Buyer The Buyer may not revoke orders given to the Supplier without prior written agreement of the Supplier.

9. Suitability for Purpose It is the Buyers responsibility to ensure that the Goods are suitable for the purpose intended by the Buyer. Every effort will be made to ensure that descriptions, drawings and other information and correspondence, catalogues and all other documents are accurate, but no warranty is given in respect thereof and Delta shall not be liable for any error therein. Any advice regarding the use of the Goods given by employees, agents or servants of Delta is given in good faith but no warranty is expressed or implied as to the correctness or accuracy of same.

### 10. Limitation of Liability

- a. To the extent permitted by law, all terms, conditions, warranties or undertakings whether express or implied, statutory or otherwise, oral or written relating in any way to the sale of the Goods or to these terms and conditions, are excluded including, without limitation, any warranties or merchantability or fitness for purpose.
- b. Where warranties or conditions apply, Delta's liability for breach is limited to the replacement of the Goods or the supply of equivalent Goods. Delta disclaims all liability to the Buyer for loss, damage or injury (including death) resulting from the use of the Goods for a purpose other than its intended purpose or otherwise than in accordance with its directions for use.

11. Acceptance The Buyer will be responsible for immediate examination of the Goods after arrival at the place of delivery and the Buyer shall be deemed to have accepted the Goods to be the description, quality and quantity as ordered unless particulars of any claim are notified to the Supplier in writing within forty-eight hours after the arrival of the Goods at the place of delivery.

12. Returns The Supplier is not obligated to accept any return of Goods from the Buyer except in accordance with the provisions of the Australian Consumer Law Act 2010 (Cth) and States Fair Trading Acts. The Buyer shall not return any Goods to the Supplier without the Supplier's prior agreement confirmed in writing. Delta may charge the Buyer a re-stocking fee: Invoice value (not including GST) up to \$1000.00 the higher of \$50.00 or 10% of the invoice value, in excess of \$1000.00 10% of the invoice value.

13. Entire Contract The terms and conditions specified herein constitute the entire contract between the Supplier and the Buyer and all other conditions, terms, warranties, and representations expressed or implied (whether statutory or otherwise) not contained herein are expressly excluded.

14. Vienna Sales Convention To the fullest extent permitted by law, the United Nations Convention on Contracts for the International Sale of Goods (Vienna 1980) known as the Vienna Sales Convention does not apply to the contract comprised by these terms and conditions nor do any of the terms and conditions express or implied by the Vienna Sales Convention form part of the contract.

15. Confidentiality All commercial offers and price details howsoever made or transmitted are confidential between Delta and the Buyer. The Buyer agrees that no details of any price or sales offer whether or not it is accepted by the Buyer will be disclosed to any third party without the written agreement of Delta. Should this not be acceptable then the Buyer agrees to advise Delta and to remove all details of any supply or sale offer and any price offer from Delta from their records.

16. Jurisdiction The contract shall be governed by the laws of the State of Victoria. The parties agree to submit any dispute arising out of this contract to the exclusive jurisdiction of the Courts of the State of Victoria.