

Terms and Conditions of Sale

1. Definitions

"Contract" means these terms and conditions or any quotation, pro-forma invoice or order confirmation of Delta Hydraulics; (in the context of the provision).

"Deliverables" means all ancillary documentation relating to Goods, including without limitation drawings, manuals, certificates and schedules.

"EXW" means under EXW, the seller makes the goods available to the buyer at the named place of delivery. Typically, this is a factory or warehouse where the buyer arranges for pickup and is responsible for the rest of the shipping journey.

"DAP" means that Delta Hydraulics bears all risks and costs associated with delivering the Goods to the named place of destination not unloaded. Customer is responsible for all costs and risks associated with unloading the goods (INCOTERMS 2010)

"Force Majeure" means any act of God, fire, explosion, flood, earthquakes, war, riots, acts of terrorism, acts of Government, sabotage, civil commotion, strikes and industrial action (but excluding strikes or industrial action solely by the parties' own employees), defects or delays in deliveries by subcontractors caused by any of the foregoing and any other circumstances beyond a party's reasonable control.

"Goods" means machinery, equipment, hardware, material, and plant. Where applicable, such machinery, equipment, hardware, material and plant may be partially complete or form part of the Customer's order

"Delta Hydraulics" means Delta Hydraulics Delta Hydraulics Limited.

"Specification(s)" means technical, functional or product specification(s) (including any performance criteria drawings or description of features) agreed in writing by the Customer and Delta Hydraulics and if none are so expressly agreed as detailed in any Drawings submitted by Delta Hydraulics.

2. Basis of supply of Goods to Customers

- (a) Goods supplied by Delta Hydraulics are sold subject to these terms and conditions ("the Terms") which apply to the exclusion of all other terms whether express, implied by law or otherwise (including any terms printed on the Customer's order forms, in correspondence or implied by trade, custom, practice or course of dealing) unless expressly agreed to in writing by Delta Hydraulics Delta Hydraulics Limited ("Delta Hydraulics"). All references in these Terms to "written agreement" by Delta Hydraulics shall mean agreement in writing signed by a duly authorised representative(s) of Delta Hydraulics; no other employee or representative of Delta Hydraulics is authorised to agree to any variation or concession of these Terms, nor to make any representation regarding the Goods.
- (b) No estimate, quotation or proposal issued by Delta Hydraulics is an offer which is capable of acceptance by the Customer to form a contract. Any order for Goods is deemed to be placed upon these Terms and will constitute an offer which Delta Hydraulics may accept or reject. Delta Hydraulics may accept such offer in writing (by sending to the Customer an Order Acknowledgement or otherwise) or otherwise, including for example by starting to process the order. If Delta Hydraulics accepts the Customer's order, there shall be a binding contract between Delta Hydraulics and the Customer at that point.

3. Prices

- (a) Unless special arrangements have been made with a Customer and confirmed in writing, the price payable for Goods shall be Delta Hydraulics' quoted price or, in the absence of any quotation, the published list price of the Goods (less any discount offered to the Customer in writing) at the time of despatch which, in the absence of written agreement to the contrary, shall be exclusive of VAT, packaging, or insurance to the point of delivery and carriage. A minimum order value may be imposed.
- (b) Delta Hydraulics reserves the right at any time (including prior to delivery following order) to withdraw, revise or vary (a) any discount offered to the Customer or (b) the quoted price or payment terms, to take account of a Customer's circumstances or increases in costs including (without limitation) costs of materials, carriage, labour or overheads, the imposition of any tax, duty or other levy and any variation in exchange rates. Any offer to keep quoted prices open will be subject to the foregoing.

4. Delivery and Installation

- (a) Unless otherwise agreed in writing by Delta Hydraulics, all Goods will be supplied EXW or DAP.
 - (b) Delta Hydraulics will use reasonable efforts to deliver Goods on the date agreed with the Customer or otherwise notified to the Customer in writing by Delta Hydraulics; delivery dates are intended to be estimates only and time for delivery shall not be made of the essence by notice. Delta Hydraulics shall be in no manner liable for any loss arising out of late or non-delivery. If no date is notified to the Customer, delivery will be within a reasonable time.
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- (c) Delta Hydraulics will not be liable for any direct, indirect or consequential loss or costs or damages, charges or expenses caused by any delay in delivering Goods nor will any such delay entitle the Customer to terminate or rescind the Contract. In case of delivery of Goods by instalments, the Customer will not be entitled to treat the late or non-delivery of Goods in any one instalment as a repudiation of the whole Contract.
- (d) The Customer will take delivery of Goods on the delivery date agreed or notified. If for any reason the Customer will not accept delivery of the Goods on time, risk in the Goods will pass to the Customer, the Goods will be deemed to have been delivered, and Delta Hydraulics will store the Goods at the cost of the Customer until actual delivery. Delivery subsequent to such a delay will be at the sole cost and risk of the Customer and shall be the Customer's responsibility to organise. Goods not collected within 60 days of the due delivery date may be disposed of and the Customer may be invoiced for (and shall pay) the cost of disposal.
- (e) Where it has been agreed by the parties in writing that Delta Hydraulics will install the Goods at the Customer's premises, the Customer shall be responsible for (a) advising Delta Hydraulics in advance of any factors or circumstances which may affect the installation of the Goods including the location where installation is to take place, (b) providing all necessary resources for the Goods to operate and for installation to take place at the location requested by the Customer, including appropriate power or water supply and assistance by the Customer's staff and (c) securing the health and safety at work of all Delta Hydraulics staff or sub-contractors installing Goods on the Customer's premises in accordance with all applicable laws and regulations, including health and safety at work legislation. Delta Hydraulics terms and conditions of installation shall apply.
- (f) Where the customer is purchasing a machine or partly completed machinery from Delta Hydraulics they must adhere to all specified handling, installation, operation, maintenance, and safety instructions in respect of Goods supplied by Delta Hydraulics. The partly completed machinery supplied by Delta Hydraulics may only be put into operation when it has been established by the Customer that the machine into which the partly completed machinery is to be incorporated conforms to the provision of EC Machinery directive 2006/42/C. Specific contract documentation will be supplied as a deliverable as part of the scope of supply.

5. Risk and Title to Goods

- (a) Save as provided in Clause 3(d) above, risk passes to the Customer on delivery.
- (b) Ownership of Goods supplied or provided to the Customer under any agreement shall not pass to the Customer until Delta Hydraulics has received in full (in cash or cleared funds):
 - (i) all sums due to it in respect of the Goods; and
 - (ii) all other sums which are, or which become due to Delta Hydraulics from Customer on any account.
- (c) Delta Hydraulics reserves title in all Goods and other items which it supplies and provides (including, but not limited to, tools) until such time as all claims, fees, charges and expenses whatsoever resulting from the business relationship of the Delta Hydraulics with the Customer have been paid in full; all Goods shall be considered as part of one continuous supply transaction. If Delta Hydraulics is continuously invoicing, reservation of title shall serve as security for the balance of Delta Hydraulics' accounts receivable.
- (d) Delta Hydraulics shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from Delta Hydraulics.
- (e) If the Customer combines or mixes any Goods in which Delta Hydraulics has reserved title with other items to form a new unit in such a way that one of the other items must be regarded as the main constituent, Delta Hydraulics shall have pro rata (co-)title in the new unit created, such (co-)title being in the ratio of the value of the Goods (co-)owned by Delta Hydraulics to the value of the combined or mixed items at the time of such combining or mixing, and the Customer hereby transfers title and possession in the new unit. Delta Hydraulics hereby accepts this transfer.
- (f) The Customer shall keep possession of the sole or co-owned items which have thus been created for Delta Hydraulics in trust free of charge.
- (g) If the Customer or third parties acting on behalf of the Customer process or modify the Goods (co-) owned by Delta Hydraulics, this shall be deemed to have been carried out for Delta Hydraulics.
- (h) If the Customer acquires sole title in the new main unit created by way of such processing or modification, the parties shall be deemed to have agreed that the Customer hereby transfers to Delta Hydraulics (co-)title and possession therein in the ratio of the value of Goods (co-) owned by Delta Hydraulics to the value of the combination or modification and that Delta Hydraulics hereby accepts such transfer. The Customer shall keep possession of the sole or co-owned items which have thus been created for Delta Hydraulics in trust free of charge.
- (i) If the Goods owned by Delta Hydraulics have not yet been inextricably combined or mixed with other items or otherwise processed or modified since supply, their value at the time of combining, mixing, processing or modification shall be deemed to be the amount billed for the Goods by Delta Hydraulics including statutory value-added tax.
- (j) The Customer is entitled to re-sell the Goods within the ordinary course of business.
- (k) If the Customer re-sells the Goods supplied, the Customer hereby assigns to Delta Hydraulics any claims which may inure to the Customer against the Customer's customers from the sale of the Goods together with all ancillary rights until such time as all Delta Hydraulics' claims have been paid in full. Delta Hydraulics hereby accepts this assignment.

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- (l) The reservation of title regarding the assignment of claims delineated in this section also applies to an item newly created by processing, modification, combination or mixing.
- (m) In any event the assignment shall be with regard to the entire claim of the Customer against its customer. The Customer has a revocable right to collect any receivables assigned. At the request of Delta Hydraulics, the Customer shall notify third-party purchasers of the assignment and provide Delta Hydraulics with any information and documents which it needs to assert its rights.
- (n) At the Customer's request Delta Hydraulics shall release the securities held by Delta Hydraulics to the extent their realizable value exceeds 10% of the claims to be secured, whereby Delta Hydraulics may select the securities to be released.
- (o) If the reservation of title or any other provisions of this Agreement are invalid or unenforceable under the law of the country in which the Goods are located, the parties shall be deemed to have agreed to whatever security corresponds most closely to the laws of Thailand with respect to reservation of title under the law of that country. The Customer shall assist and support Delta Hydraulics in obtaining the security. If the reservation of title or any other provisions of this Agreement are not valid under the law of the country in which the Goods are located unless it has been duly registered, the Customer shall arrange for or assist with such registration in Delta Hydraulics' favour without undue delay as soon as the Goods have arrived in that country and shall notify Delta Hydraulics thereof unsolicited.

6. Warranty

- (a) Subject to Clauses 6(c) and (d) below, Delta Hydraulics warrants that Goods shall be of satisfactory quality and workmanship and shall conform to an agreed specification or description of the Goods provided to the Customer by Delta Hydraulics for a period of 12 months following delivery of the Goods.
- (b) If the Goods, or any part of them, do not conform to the warranty in 6(a) above Delta Hydraulics will, at its option, repair or replace the Goods or refund an appropriate part of the price provided always that the Customer shall inform Delta Hydraulics in writing of any alleged defect as soon as it is discovered and shall afford Delta Hydraulics a reasonable opportunity after receiving such notice to examine the Goods. The Customer shall if requested return the Goods to Delta Hydraulics' premises for these purposes.
- (c) Delta Hydraulics shall not be liable for any breach of warranty where: -
 - (i) defects are due to causes beyond its reasonable control (force majeure) or, failure by the Customer or any third party to correctly store, apply, install or transport the Goods, nor defects due to fair wear and tear or wilful damage or negligence by the Customer; or
 - (ii) the Customer has or has attempted to repair or alter the Goods; or
 - (iii) the Goods have not been maintained, installed, commissioned or operated in accordance with good engineering practice and all reasonable instructions and guidance provided by Delta Hydraulics in its drawings, drawings and manuals or otherwise) from time to time; or
 - (iv) defects in the Goods are due to the failure or design of other equipment of the Customer with which the Goods interact, or failure of electrical supply or any other related services or systems; or
 - (v) defects are due to any design, materials or third party Goods/or Software stipulated or specified by the Customer or any materials provided by the Customer except to the extent that Delta Hydraulics has expressly accepted responsibility for the same in writing; or
 - (vi) defects arise out of any Software or Software modifications except where such Software forms part of the Data Sheet for the Goods.
- (d) Goods are selected by the Customer and the Customer shall be responsible for ensuring the accuracy of any order and the appropriateness or suitability of any Goods selected. The Customer is particularly reminded that any test data supplied by Delta Hydraulics is so supplied for information and purposes only and must be verified independently.
- (e) Same as provided above, all warranties, conditions and terms implied by statute or common law are excluded from any contract between Delta Hydraulics and the Customer to the fullest extent permitted by law. In particular, and without prejudice to the foregoing, Delta Hydraulics makes no warranties and shall not be liable in respect of goods or components manufactured or supplied by third parties outside the group of companies to which Delta Hydraulics belongs.

7. Liability

Subject to Clause 6(e) above and Clause 7(c) below:

- (a) Delta Hydraulics' liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited, for any one default or series of related defaults to the lower of:
 - i) 50% of the total value of the Goods, or
 - ii) £250,000 in aggregate.
- (b) Delta Hydraulics shall not be liable to you for any loss of profit, loss or depletion of goodwill, loss or damage to data, loss of opportunity or time, or damages, costs, expenses or other claims or indirect or consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

- (c) Nothing in these terms excludes or limits the liability of Delta Hydraulics for fraudulent misrepresentation or death or personal injury caused by its negligence.

8. Delay

- (a) Delta Hydraulics shall not be liable for any failure to meet agreed delivery dates or other time stipulations for performance of contractual obligations in the event of Force Majeure or where such delivery or performance is dependent on some act to be done or information to be provided by the Customer or its representatives, employees, agents or subcontractors and the Customer has failed to do such act or to provide such information within a reasonable time, where the Contract has been suspended by Delta Hydraulics under clause 10(b) or where delay is caused by the failure of any sub-contractor stipulated by the Customer to deliver or perform according to its Contract with Delta Hydraulics.
- (b) Subject to clause 7 (c) above, Delta Hydraulics will not be liable for any direct, indirect or consequential loss or costs or damages, charges or expenses caused by any delay in delivering Goods nor will any such delay entitle the Customer to terminate or rescind the Contract. In the case of delivery of Goods by instalments, the Customer will not be entitled to treat the late or non-delivery of Goods in any one instalment as a repudiation of the whole Contract.

9. Cancellation

- (a) Once accepted by Delta Hydraulics a contract may not be cancelled or terminated by the Customer except in the event of a material breach by Delta Hydraulics which (if capable of remedy) Delta Hydraulics has failed to remedy within a reasonable time of the Customer's written request to do so or within a longer period otherwise agreed between Delta Hydraulics and the Customer in writing.
- (b) In the event of cancellation or termination without cause the Customer shall remain liable to compensate Delta Hydraulics for the full price of the Goods subject only to Delta Hydraulics taking all reasonable steps to mitigate its loss.

10. Payment

- (a) Subject to any special terms agreed in writing with a Customer, payment of invoices is due (without set off, deduction, abatement or withholding) at the end of the month following the month of invoice.
- (b) If the Customer fails to pay any sums due to Delta Hydraulics when due then, in addition to any other right which Delta Hydraulics may have, Delta Hydraulics may (i) charge interest on overdue sums at the rate of 4% per annum above the base rate from time to time of Barclays Bank Plc from the due date until payment (before as well as after judgement, calculated annually but accruing on a daily basis) and/or (ii) delay, suspend or cancel any remaining part of the Contract (or any other contract) with the Customer and/or (iii) vary or withdraw any discount or credit offered to the Customer.
- (c) Delta Hydraulics shall be entitled to sue on the price notwithstanding the fact that title in the Goods has not passed.

11. Governing Law and Jurisdiction

The Contract and these Terms shall be governed by and construed in accordance with the laws of Thailand and Delta Hydraulics and the Customer each submit to the exclusive jurisdiction of the English courts in relation to any claim or dispute arising thereunder.

12. Intellectual Property

- (a) In the absence of written agreement to the contrary, all rights, title to, and interest in all intellectual property (including patents, copyright, design rights, and trade marks) and materials (including all plans, diagrams, specifications, designs, data, drawings and models) which are developed, designed, co-designed or generated by Delta Hydraulics in the performance of any contract with the Customer and the supply of the Goods, shall vest in and belong to Delta Hydraulics as legal and beneficial owner and the Customer is only granted a limited licence to use the same to facilitate its use of the Goods.
- (b) All rights, title to and interest in all intellectual property (including copyright, design rights, and trade marks) and materials (including all plans, diagrams, specifications, designs, data, drawings and models which are developed, designed or generated by the Customer shall vest in and belong to the Customer.
- (c) Delta Hydraulics and the Customer will each, as and when required to do so by the other party, and at that other party's expense, execute or do or procure to be executed or done all instruments and things necessary for vesting such intellectual property and confirming all rights, title to and interest in the same as set out in Clauses 11(a) and 11(b) above. Each party shall indemnify the other in full in respect of all costs, claims, liabilities and expenses which that other party may incur in relation to any claim by a third party that the use of any such intellectual property or materials infringes the intellectual or other property rights of that third party.

13. Export Control

Deliveries and services (fulfilment of contract) will only be executed under the proviso that their fulfilment complies with national or international export control regulations and does not violate any embargoes or other sanctions. The Customer commits himself to supply all necessary information and documents necessary for the export or transfer of any applicable Goods to other countries. Delays due to export control assessments or export control licensing procedures shall invalidate terms and dates of delivery. When licenses are not granted, or the delivery and service is not licensable, these Terms become void in respect of the affected parts.

14. Miscellaneous

- (a) Contracts with Customers are not intended to benefit any third party whether named and identified.
- (b) The Customer shall not assign or subcontract the Contract without Delta Hydraulics' prior written consent. Delta Hydraulics shall be entitled to assign or subcontract the Contract.
- (c) The failure of a party to exercise or enforce any right under the Contract shall not be deemed to be a waiver of that right nor operate to bar the exercise or enforcement of it at any time or times thereafter.
- (d) If any part of the Contract becomes invalid, illegal or unenforceable the parties shall in such event negotiate in good faith in order to agree the terms of a mutually satisfactory provision to be substituted for the invalid, illegal or unenforceable provision which as nearly as possible gives effect to their intentions as expressed in the Contract.

Acknowledgement of acceptance of these Terms and Conditions of Sale: -

Signed by: _____

Date: _____

Signature: _____

On behalf of: _____