

Conditions of Sale

Definitions

Buyer: means the party to whom the Delta Fire Australasia Group has agreed to supply goods pursuant to this Contract.

Buyers Reference Number: means the customer reference number assigned to the Buyer by the Seller.

Contract: means this contract.

Delivery Failure Notice: means a notice from the Buyer to the Seller stating the Seller failed to supply the Goods in accordance with the Contract, listing the Buyers Reference Number, the invoice number and the specifics of that failure.

Delta Fire Australasia Group: means the following companies only; Delta Fire Australasia Pty Ltd, Delta Fire & Safety (NSW) Pty Ltd, Delta Fire & Safety (QLD) Pty Ltd & Delta Fire & Safety (VIC) Pty Ltd

Interest: means 10% simple interest per annum.

PPSA: means the *Personal Property Securities Act 2009* (Cth).

Seller: means the Delta Fire Australasia Group.

Goods: means the goods and/or services agreed to be supplied by The Delta Fire Australasia Group and purchased by the Buyer

Conditions Binding

- 1) These conditions take precedence over any other agreements, representations or understandings (whether written or oral) and are accepted and binding on the parties when the Buyer signs and returns this Contract to the Seller or gives written or verbal notice to the Seller to proceed with the supply of the Goods to the Buyer.
- 2) No amendment to these terms and conditions are effective unless the amendment is in writing signed by both parties.

Goods

- 3) The Buyer is responsible for ensuring the Goods are:
 - a) fit for purpose;
 - b) installed:
 - i) by an authorized and licenced installer; and
 - ii) in accordance with the manufacturer's handbook/ manual.

Delivery

- 4) The Seller will use its best endeavors to complete delivery of all Goods.
- 5) The Goods are at the risk of the Buyer from the point the Goods are loaded on freight.
- 6) The Buyer releases and indemnifies the Seller for any loss or damage to the Goods in freight and for any delay in delivery of the Goods from the Seller to the Buyer.
- 7) If for any reason the Seller is unable to deliver the Goods pursuant to this Contract then the Seller may cancel this Contract and the Buyer's only remedy in that case is a refund of any deposit paid to the Seller.
- 8) The Seller, at its absolute discretion, determines where the Goods will be supplied to the Buyer from and the Buyer must either:
 - a) arrange freight from the determined location at the Buyer's cost; or
 - b) give written notice to the Seller that the Buyer requests the Seller prepare freight of the Goods from the determined location, and if the Seller agrees to that request then the Buyer must pay the total cost of freight of the Goods to the freight company nominated by the Seller, at its absolute discretion, before the Goods freight from the determined location.

Return of Goods & Credits

- 9) The Buyer must inspect the Goods on delivery to the Buyer through freight. Should the Buyer discover that the Goods are not the Goods as described in the Contract (ie type or quantity) then the Buyer must serve a Delivery Failure Notice to the Seller within 2 business days of receipt of the Goods. If the Buyer does not serve a Delivery Failure Notice on the Seller within 2 business days of receipt of the Goods then the Buyer is deemed to unconditionally accept the Goods delivered.
- 10) Upon receipt of a Delivery Failure Notice from the Buyer, the Seller may inspect the Goods and either:
 - a) give notice to the buyer accepting the Delivery Failure Notice, assigning the Buyer a reference number for the return of Goods and asking the Buyer to return the Goods to the Seller in which case the:
 - i) Seller will:
 - (1) apply a credit to the Buyer's account, which is the Buyer's only remedy for the Seller's failure to supply the Goods in accordance with the Contract;
 - (2) arrange for replacement Goods for the Goods which were rejected under the Delivery Failure Notice subject to the terms of this Contract;
 - ii) Buyer must freight the Goods rejected under the Delivery Failure Notice to the Seller within 21 days from the date the Seller gives the Buyer notice of acceptance of the Delivery Failure Notice, at the Buyer's cost, along with a copy of the Delivery Failure Notice in a clean, neat condition inside the original Goods packaging.
 - b) reject the Delivery Failure Notice by notice to the Buyer in which case the Buyer is deemed to have accepted the Goods unconditionally.
- 11) Should the Buyer fail to strictly comply with clause 10a(ii) of this Contract then the Seller may give notice to the Buyer withdrawing its notice accepting the Delivery Failure Notice and replacing it with a notice under clause 10b;
- 12) Any Goods returned to the Seller pursuant to this Contract must be returned at the Buyer's cost, unless delivered as the result of administrative error, in which case the Seller will bear the cost of return.

- 13) The Buyer must not return any goods to the Seller unless it has complied with clause 9 of this Contract and has done all things necessary to permit the Seller to examine the goods to the Seller's satisfaction.

- 14) Goods returned to the Seller will incur a fee of 25% of the invoiced value of the Goods unless goods were delivered as a result of an administrative error made by the Seller.

Payment

- 15) Unless otherwise agreed upon in writing, Terms of payment shall be strictly NET 30 days from the date the invoice was raised. These terms exclude freight charges invoiced out as outlined in clause 6. which are strictly Net Seven (7) days.
- 16) Where the Buyer fails to comply with clause 15 the Seller can charge Interest on the amount due from the date due to the date of payment by the Buyer and the Buyer unconditionally agrees to pay the Interest to the Seller.
- 17) The Buyer indemnifies the Seller for any costs the Seller incurs in enforcing this Contract against the Buyer.

Title to Goods

- 18) Title to the Goods does not pass from the Seller to the Buyer until the Buyer has paid the Seller the total of the Seller's invoiced amount for the Goods and Interest if applicable.
- 19) Until such time as the Buyer has paid the Seller the total of the Seller's invoiced amount for the Goods and Interest if applicable, the Buyer grants the Seller:
 - a) irrevocable, unconditional consent to enter the Buyer's property to remove the Goods if the Buyer fails to comply with clause 15 of this Contract;
 - b) an irrevocable, unconditional, equitable charge over any and all of the Buyer's real property;
 - c) a security interest in the Goods to secure payment for the Goods. The security interest is a fixed charge over all the Buyer's present and after-acquired property including anything over which the Buyer has at any time a right, interest or power to grant a security interest, and appoints the Seller as its nominee to register the security interest under the PPSA.

Liability for Defects

- 20) Upon receipt of notice from the Buyer that the Buyer alleges Goods are defective in design, materials or workmanship, the Seller will investigate the allegations and give notice to the Buyer that the Seller determines the Goods are either:
 - a) defective in design, materials or workmanship in which case clause 22 applies; or
 - b) not defective in design, materials or workmanship and give the Buyer an invoice for time spent investigating the allegation at a cost of \$75 per hour including GST, plus outlays incurred in the investigation which the Buyer agrees is a reasonable cost for the Seller's investigation and is a debt payable to the Seller.
- 21) The Seller's determination under clause 20 is final and binding on the Buyer and Seller.
- 22) The Seller will use its best endeavours to most efficiently either repair or replace, the choice of which is at the Seller's absolute discretion, any Goods which are defective in design, materials or workmanship as determined by the Seller, but the Buyer is liable for and must reimburse the Seller for any outlays incurred by the Seller in attending on the Goods in situ to repair or replace them (including but not limited to travel costs) and the Buyer agrees to pay those costs as a debt payable to the Seller.
- 23) The Buyer and Seller agree that the Seller's obligation to repair or replace Goods under clause 22 is:
 - a) limited to 1 year from the date the Seller supplies the Goods to the Buyer; and
 - b) the only remedy for the Buyer if the Goods are defective in design, materials or workmanship as determined by the Seller and the Buyer releases and indemnifies the Seller against any claims for loss or damage arising from or related to Goods being defective in design, materials or workmanship.

Subcontractors

- 24) The Seller may subcontract any entity to perform any of the Seller's obligations under this Contract.

Assignment

- 25) The Seller may assign its rights and obligations under this Contract.
- 26) The Buyer cannot assign its rights and obligations under this Contract without the written consent of the Seller.

Electronic Exchange in Counterpart

- 27) The parties consent to electronic exchange of this Contract and each part executed in Counterpart will together form the one Contract.

Costs

- 28) Each party must bear their own costs of reviewing, negotiating and executing this Contract.

Applicable Law

- 29) This Contract is subject to the jurisdiction of the law of Queensland.