



STANDARD TERMS AND CONDITIONS OF SALE, REPAIR, PARTS, MODIFICATION, MAINTENANCE, INSPECTION, AND TEST

I. ACCEPTANCE

All orders placed by any party (in each case, “Buyer”) are subject to acceptance by Delta-Electro Power, Inc. (“Seller”). Any acceptance by Seller of Buyer’s order is expressly made conditional on Buyer’s assent to the terms and conditions contained herein and any additional or different terms and conditions established from time to time by Seller (collectively, “Seller’s Terms and Conditions”). By placement of an order with Seller, Buyer unconditionally and irrevocably accepts and agrees to be bound by Seller’s Terms and Conditions Seller shall not be bound by any terms and conditions presented or proposed by Buyer, whether in its purchase order or otherwise, which are additional to or different from Seller’s Terms and Conditions.

2. TAXES

Seller’s prices do not include any applicable sales, use, excise, value added or similar taxes; and the amount of any such tax which Seller may be required to pay or collect will be added to each invoice and shall be paid by Buyer unless Buyer has furnished Seller with a valid tax exemption certificate acceptable to Seller.

3. TERMS

Payment terms are cash net 30 days, unless otherwise agreed to in writing by Seller. Amounts past due are subject to a service charge of 1 and 1/2 percent per month (prorated for partial months) or maximum contract rate permitted by law. If Seller deems that by reason of the financial condition of Buyer or otherwise, in the sole and absolute discretion of Seller, the continuance of any services or shipment of products on the terms specified herein is not likely to be promptly paid for, Seller may require full or partial payment in advance.

4. PRICE POLICY

Prices shall be subject to adjustment to those in effect at time of shipment.



5. DELIVERY

Shipping, customer pick up or delivery dates given by Seller are approximate and are not guaranteed. Shipping and other date approximations are based on prompt receipt of information, equipment, or access to the equipment at the customer's premises if work is performed on said premises.

Seller will use its reasonable efforts to meet the scheduled dates, however, it shall not be responsible for its failure to do so for causes beyond its reasonable control and in no event shall it be liable for any loss or damage resulting from its failure to deliver the services within the time specified herein.

6. SHIPPING/HANDLING CHARGES

Shipments are F.O.B. point of shipment. Shipping/handling will be prepaid and billed as a separate item on invoices on the basis of Seller's current shipping/handling policies.

7. CHANGES

In the event that Buyer, with the express written consent of Seller, makes changes to the specifications for equipment, services or work covered by Buyer's purchase order, then, in the event there is no change to the price to be paid by Buyer or delivery dates expressly agreed to by Buyer and Seller, the price and delivery dates shall be equitably adjusted. Seller shall be entitled to payment for reasonable profit plus costs and expenses incurred by it for services, work and materials rendered unnecessary as a result of such changes and for work and materials required to effect said changes.

8. CANCELLATION

Undelivered parts of any order may be canceled by Buyer only with the written approval of the Seller. If Buyer makes an assignment for the benefit of creditors, if a voluntary or involuntary petition or action in bankruptcy or for reorganization or under any other insolvency law shall be filed by or against Buyer, if Buyer shall admit its inability to pay its debts, if a trustee, receiver or liquidator is appointed for any part of the assets of Buyer, or if Buyer fails to make payments to Seller in accordance with the terms hereof, Seller may at its option cancel all undelivered parts or any order by written notice to Buyer.

In the event of any cancellation of this order by either party, Buyer shall pay Seller the reasonable cost and expense, including engineering expense and all commitments to its suppliers and subcontractors, incurred by Seller prior to receipt of notice of such cancellation, plus Seller's usual rate of profit for similar work.



9. ELECTRONIC DATA INTERCHANGE

Orders placed hereunder by Buyer may be transmitted electronically via email or other electronic transmission, as may Seller's acceptance and other communications between the Parties.

10. REGULATORY LAWS AND STANDARDS

Seller makes no representation or warranty that its products, services or work will conform to any federal, state or local laws, ordinances, regulations, codes or standards, except as particularly specified and agreed upon for compliance in writing as part of the quotation or contract between Buyer and Seller. Seller prices do not include the cost of any related inspections or permits or inspection fees.

11. EXPORT CONTROL

Products and associated materials supplied or licensed under this agreement may be subject to various export laws and regulations. It is the responsibility of Buyer to ensure compliance with all such laws and regulations.

12. WARRANTY

A. WARRANTY PERIOD

All repair, inspection, test, service, modification or maintenance sold or serviced by Seller is warranted to be free from defects of material and workmanship and to conform to any applicable drawings, specifications, or written documents approved by the Seller for a period of time as detailed below:

1. Reconditioned: 90 days from date of shipment.
2. Recondition and standard rewind: 1 year in service
3. New Product Sales: 1 year in service or 18 months from date of shipment, whichever occurs first.

The above warranties shall be based on such equipment operating with competent supervision under normal load, usage and conditions.

B. WARRANTY – REPAIR, MODIFICATION, REBUILD

If within the period specified above, Seller receives from Buyer written notice of any alleged defect or non-conformity and if the services provided are found not to be in conformity with this warranty (Buyer having provided Seller reasonable opportunity to perform any appropriate test thereon) Seller will, at its option, correct such nonconformity or supply a replacement thereof. This warranty shall only apply to parts repaired or replaced by Seller. No separate warranty shall



apply to repaired apparatus as a whole or to parts not repaired or replaced by Seller. Seller shall have the right to require Buyer to deliver any apparatus covered by this warranty to a designated service center and Buyer shall pay both in-bound and out-bound transportation charges, Seller accepting only the direct and actual cost of apparatus repair or replacement as provided above.

C. WARRANTY – PARTS

If any part provided by the Seller shall prove defective in material and/or workmanship within one (1) year from the date of shipment. Buyer shall immediately thereupon notify Seller in writing of such defect. Seller shall, at its option, modify, repair, supply a replacement part or refund the purchase price of said part. Seller shall have the option to have the part returned to it, F.O.B. its factory, or to make such adjustment at the point of installation. Seller shall invoice for all travel and labor involved. Seller shall accept no responsibility if such part has been improperly operated or maintained or if Buyer has permitted any unauthorized modifications, adjustments and/or repairs to the part. Parts not manufactured by Seller shall not be covered by any warranty of Seller.

D. WARRANTY – INSPECTION, TEST, MAINTENANCE, CALIBRATION, CONSULTATION

Seller warrants that Seller's services will be provided in accordance with typical industry practice. If any service fails to meet the foregoing warranty, Seller shall perform such additional or replacement services to meet typical industry practice.

E. REMANUFACTURED EQUIPMENT/COMPONENTS

All equipment components remanufactured by Seller will be warranted for a period of ninety (90) days from date of shipment.

F. EXCLUSIVE WARRANTY

THE WARRANTIES PROVIDED HEREIN ARE IN LIEU OF AND EXCLUDE ALL OTHER EXPRESS, IMPLIED OR STATUTORY WARRANTIES, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THIS WARRANTY IS LIMITED TO THE ORIGINAL INVOICE AMOUNT. THE SELLER DOES NOT WARRANT THE DESIGN OF ANY EQUIPMENT, MATERIAL, COMPONENTS OR SERVICES OF OTHERS.



13. INDEMNITY

Buyer, for itself and its owners, directors, managers, successors, assigns, agents, and employees, assumes liability for and agrees to defend, indemnify, and forever hold harmless Seller, and its owners, directors, managers, successors, assigns, agents, and employees, from and against any loss, death or injury to persons, damage to property, liabilities, claims, costs, damages, legal fees, or expenses of any kind resulting from Buyer's use and/or operation of any products purchased from, serviced by, or otherwise worked on by Seller, excepting only those solely and directly caused by the gross negligence or willful misconduct of Seller.

14. TITLE

All scrap resulting from the work shall be the property of Seller. The title and right of possession of equipment repaired, modified, inspected, tested or maintained under this contract shall remain with Buyer, subject to any applicable lien rights of Seller.

15. DISCLAIMER OF DAMAGES

IN NO EVENT SHALL SELLER BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, OR PENAL DAMAGES, WHETHER SUCH DAMAGES ARISE OUT OF OR ARE A RESULT OF BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE. Such damages shall include but not be limited to loss of profits or revenues, loss of use of the equipment or associated equipment, cost of substitute equipment, facilities, down time costs, increased construction costs, business interruption, or claims of Buyer's customers or contractors for such damages. Buyer agrees that in the event of a transfer, assignment, or lease of the equipment or other products sold hereunder that Buyer shall secure for the Seller the protection afforded to it in this paragraph.

16. LIMITATION OF LIABILITY

The Seller shall not be liable for any loss, claim, expense or damage caused by, contributed by or arising out of the acts or omissions of Buyer or third parties, whether negligent or otherwise. In no event shall the Seller's liability for any cause of action whatsoever exceed the cost of the item giving rise to the claim, whether based in contract, warranty, indemnity, or tort (including negligence). Any suit arising hereunder must be commenced within one (1) year from the date the cause of action accrues without regard for any otherwise applicable statutes of limitations, or the same shall be forever waived.



17. NO RESPONSIBILITY FOR GRATUITOUS INFORMATION OR ASSISTANCE

If Seller provides Buyer with assistance or advice which concerns any parts/products/service supplied hereunder or any system or equipment in which any such part/product/service may be installed and which is not required pursuant hereto, the furnishing of such assistance or advice shall not subject Seller to any liability, whether based in contract, warranty, tort (including negligence) or otherwise.

18. INTERPRETATION

Should any term or provision contained in any contract covered by Seller's Terms and Conditions contravene or be invalid under applicable law, the contract shall not fail by reason thereof but shall be construed in the same manner as if such term or provision had not appeared therein. All transactions covered by these terms and conditions shall be governed by the laws of the State of Rhode Island. In any litigation concerning Seller's Terms and Conditions or any products sold, serviced, or otherwise worked on by Seller, Buyer irrevocably consents to and confers exclusive jurisdiction on the courts of the State of Rhode Island and on the United States District Court for the District of Rhode Island, and hereby expressly waives any objections to lack of personal jurisdiction, venue, or inconvenient forum in any such courts. Buyer's rights under these terms and conditions are not assignable without the express written consent of Seller.