



General Terms and Conditions for Sale of High Powered Air Movers

These General Terms and Conditions for Sale of High Powered Air Movers (“Terms and Conditions”) shall apply to all forecasts, quotations, offers to sell, purchase orders (“POs”, each of which is a “PO”) and deliveries provided or accepted by Delta Electronics (Americas) Ltd. and its parent, siblings, subsidiaries or other affiliate companies in the Americas (collectively referred to as “Delta”). These Terms and Conditions form a part of the contract made between Delta and its customers (the “Customer”) with respect to the sale of High Powered Air Movers (“Products”), reflecting all of the Customer’s rights and Delta’s obligations and responsibilities for each PO. General terms of business on the part of the Customer shall apply only if confirmed by Delta beforehand in writing. Except where the sale of the Products is already governed by a master purchase agreement negotiated and entered into by the parties, these Terms and Conditions apply and supersede all other terms and conditions, even if Delta acknowledges that the Customer’s terms and conditions may be or are contrary to the Terms and Conditions when Delta delivers Products to the Customer.

1. Quotation

- 1.1 Delta’s quotation shall be valid for a period of thirty (30) days. Unless otherwise stated or referred to in writing by Delta, all prices quoted by Delta shall exclude transportation, insurance, taxes, customs fees, duties and other similar related charges.
- 1.2 The price, quantity, quality and specification of goods shall be those set forth in Delta’s quotations. Prices outside of quotation period are subject to change without notice.

2. Delivery and Inspection

- 2.1 Delivery methods are based on prevailing market conditions at the time Delta accepts Customer’s PO. Delta shall prepare and package all Products in a manner consistent with standard requirements and general practices in the industry.
- 2.2 Unless the mutually agreed PO otherwise states, the shipment term shall be Incoterms 2020 FOB Fremont, CA for standard domestic shipment, or FCA Hong Kong for factory direct shipments. Partial delivery of goods ordered is permissible.
- 2.3 Delta may extend delivery schedules or, at its option, cancel the Customer’s PO in full or in part without incurring liability in the event that the Customer breaches these Terms and Conditions. Delta may also extend delivery schedules on an as-needed basis due to longer-than-anticipated component lead times, or subsequent increases in component lead times.
- 2.4 Unless otherwise stated in writing by Delta, the Customer is obliged to inspect the Products upon delivery and shall notify Delta of any defect found within seven (7) calendar days after the receipt of the Products. The said incoming inspection will at least include a quantity and an outward appearance check. If the Customer fails to notify Delta of a defect within this inspection period, the Customer shall be deemed to have accepted such Products. Unless otherwise stated in writing by Delta, the Customer shall also be obliged to test the Products and notify Delta of any defect found within forty-five (45) calendar days after receipt. Any costs and expenses related to the inspection, testing and acceptance of the Products shall be borne by the Customer.
- 2.5 After Delta’s notification of readiness for shipment, if shipment or supply is deferred, re-routed or re-scheduled at the request of the Customer or delayed for reasons attributable to the Customer, Delta may charge extra costs, expenses or losses, including but not limited to storage or retention costs, to the Customer. The Customer agrees to compensate Delta within thirty (30) calendar days upon the receipt of notice from Delta.

3. Termination or Change

- 3.1 Except for below permitted cancellation, the Customer may not terminate, suspend performance, reschedule, postpone the receipt of Products requested for delivery by a requested date indicated on Customer PO, change the quantity of Products, or cancel delivery or issue a “hold” order in whole or

in part without Delta’s prior written consent. Where Delta’s quotation provides that an order is “NCNR”, the Customer may not cancel such order. If the quotation does not specify NCNR, the Customer may only cancel the order by compensating Delta for any loss or damage resulting from such an action as follows:

Standard Delta Fans	
Time of Cancellation	Permitted Cancellation
Within 28 days of receipt of PO	100% of total quantity
29 – 42 days after receipt of PO	50% of total quantity
43+ days after receipt of PO	0% of total quantity

OEM Fans	
Time of Cancellation	Permitted Cancellation
Within 28 days of receipt of PO	100% of total quantity
29+ days after receipt of PO	0% of total quantity

- 3.2 The Customer’s liability for failing to comply with this Section 3 shall include, but is not limited to, the price of the Product delivered or held for disposition, Products in transit, the price of services already performed and the work in progress, raw materials, incurred costs, reasonable allocation of general and administrative expenses, and Delta’s loss of profits.
- 3.3 The Products will be insured against theft, breakage, damage in transit, fire and water damage, and other insurable risks at the request and cost of the Customer.

4. Price and Payment

- 4.1 Unless otherwise agreed to in writing, payment shall be made in US dollars, and the Customer shall pay the price of the Products within the payment period stated in the Delta quotation. In case the quotation is silent about the payment term, the payment term shall be net thirty (30) days upon invoice date. Any banking charges associated with the Customer’s payment shall be borne by the Customer.
- 4.2 Each shipment of the Products under each PO shall be considered a separate and independent transaction and payments thereunder shall be made accordingly.
- 4.3 If the Customer fails to make a payment when due:
 - 4.3.1 Delta may (1) suspend or withhold further shipments of the Products under the same or other POs until all outstanding amounts are paid; (2) require advance cash payments on further shipments; (3) cancel the Contract or the applicable shipment for delivery; (4) require the Customer to return to Delta or its designee any Bill of Lading or other document issued or to be issued in favor of the Customer; (5) take any other action Delta deems appropriate in its sole discretion; or (6) pursue any remedies available at law or as provided in the Contract.
 - 4.3.2 The Customer shall reimburse Delta for costs of collection, including legal fees and disbursements, and shall pay two



percent (2%) of all past-due balances per month.

4.4 If Delta believes reasonable doubt exists as to the Customer's financial solvency, or if the Customer is past due in payment of any amount owed to Delta, Delta shall have the right, without prejudice to any other remedies, to suspend performance, decline to ship, or stop any Product in transit until Delta receives payment of all amounts owed to Delta or receives adequate assurance of such payment.

4.5 The Customer acknowledges that both the amounts invoiced by Delta and the shipments in progress are included in the Customer's credit limit with Delta. If at any time the Customer exceeds its credit limit, the Customer shall, within seven (7) business days, make payment sufficient to recover its outstanding credit to maintain its credit limit and will continue to pay invoices on or before their due date. The Customer is not entitled to offset or reduce any payments due to Delta unless otherwise agreed to in writing by Delta.

5. Compliance with Laws and Export Control

5.1 The Customer shall be responsible for obtaining all licenses and permits to export or import the Products, and shall comply with all applicable laws and other requirements, including but not limited to, those regarding labeling, safety and usage, handling and disposal of hazardous materials, import and export of materials, and with all other applicable laws and regulations.

5.2 Customer hereby acknowledges that the Products supplied by Delta under these Terms and Conditions may be subject to the export control laws and regulations of the United States and certain other countries. Customer shall comply with all such export control laws and regulations, and shall not sell, supply, export, re-export, transfer or divert any of the Products in a manner contrary to, or in violation of, any of those export control laws and regulations. Without limiting the generality of this Section 5.2, Customer agrees that it will not sell, supply, export, re-export, transfer or divert any of the Products directly or indirectly to: (i) any country or region subject to a United States Government export embargo, or any person or entity located in any such country; (ii) any person or entity listed on any United States Government's list of prohibited and restricted parties; or (iii) any other person or entity for use, directly or indirectly, in any activities related to the proliferation of nuclear, chemical or biological weapons, or any ballistic missiles, rockets or unmanned aerial vehicles. To the extent that any export license, permit or other government authorization is required under any of those export control laws and regulations in order for Delta to supply the Products to Customer, Delta shall have no obligation, and shall be excused from performance, under these Terms and Conditions, in the event that Delta is unable to obtain such export license, permit or other government authorization.

5.3 Any product export classification made by Delta shall be for Delta's internal use only, and not be construed as a representation or warranty regarding the proper export classification for such product, or whether an export license or other documentation is required for exportation. This Section 5 shall survive termination of these Terms and Conditions.

6. Force Majeure

6.1 Delta shall not be liable for any failure to deliver or any delay in the performance of the Terms and Conditions or for any loss or damages suffered by the Customer if such failure or delay is directly or indirectly caused by, or in any manner arises from events and causes beyond Delta's reasonable control,

including but not limited to accidents, acts of God, acts and omissions of any governmental authority, including tariffs, declared or undeclared wars, terrorism, explosions, strikes or other labor disputes, fires and natural calamities (including floods, earthquakes, storms and epidemics), changes in the law, and delays in obtaining (or the inability to obtain) labor, materials or services through Delta's usual sources at normal prices, riots, embargoes, fuel shortages, power shortages, materials or supply shortages, delay or default of common carriers, transportation delays, or without limiting the foregoing, any other cause or causes, whether or not similar in nature to any of these specified herein or which are beyond Delta's reasonable control.

6.2 Delta shall have the additional right, in the event of the occurrence of any contingency above, to cancel any PO or any part thereof without any resulting liability, or to extend the date of delivery for a period of time equal to the time actually lapsed by the reason stated above. In the event that Delta, for any reason, is not able to produce enough Products to satisfy all outstanding POs, Delta retains the right and sole discretion to allocate the Products amongst its customers.

7. Warranty and Returns

7.1 Unless otherwise stated in writing, Delta provides the warranty in this Section 7 to the Customer for a period of (1) year from the delivery date to the Customer. Any warranty claims made by the Customer under this Section shall be made within the warranty period.

7.2 Unless otherwise stated or referred to in writing, Delta warrants that to Delta's best knowledge, the Products sold and manufactured by Delta do not contain Defects. A "Defect" shall refer a Product that (1) does not conform to Delta's specifications; or (2) contains defects in materials and workmanship (under normal usage, provided that any applicable Delta operation and maintenance instructions are followed by the Customer, and subject to any additional warranty exclusions set forth in this Section 7 and/or a product warranty policy provided by Delta).

7.3 Normal wear and tear shall not be considered a defect. Product must be installed and operated according to Product specification(s) and Product installation/user manual(s). Maximum voltage variation may be no greater than the input voltage indicated in Product specifications, with avoidance to power line disturbances of any kind. Product application is not to exceed maximum specified operating temperature. Product must be installed and grounded in accordance with all relevant electrical and safety codes, as well as the National Electric Code and OSHA rules and regulations. Product must be installed in a stationary application free of vibration and shock.

7.4 EXCEPT AS EXPRESSLY STATED IN THIS SECTION 7, ALL OTHER REPRESENTATIONS, WARRANTIES, TERMS OR CONDITIONS, ORAL OR WRITTEN, EXPRESS OR IMPLIED, ARISING FROM THE COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, QUALITY OF INFORMATION, QUIET ENJOYMENT OR OTHERWISE (INCLUDING IMPLIED WARRANTIES, TERMS OR CONDITIONS OF MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INTERFERENCE, OR NON-INFRINGEMENT) ARE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EXCLUDED FROM THIS AGREEMENT.

7.5 Upon any failure of a Product to comply with the warranty under Section 7, Delta's sole obligation, and the Customer's sole remedy, is for Delta, at its option, to repair or replace such unit of Product and return it to the Customer. The Customer



shall return the Products covered by this warranty and ensure Delta receives the failed Product within fifteen (15) days after completing and submitting a failure report to Delta. If Delta chooses to replace, the replacement may be a refurbished Product. The warranty period for the repaired Product or the replacement shall be the longer of the remainder of the original warranty period or six (6) months from the date Customer receives the repaired Product or replacement.

- 7.5.1 Delta shall replace or repair the Products free of charge within warranty period.
- 7.5.2 The Customer shall bear all of the risk, and all of the costs and expenses associated with Products that have been returned to Delta for which there is no defect found. The said costs include the cost of shipping a replacement unit to the Customer.
- 7.5.3 Delta shall not reimburse for the cost of shipping a warrantied Product to Delta, for labor associated with installation or removal of any warrantied Product, nor for parts or labor resulting from repairs performed by anyone other than Delta.
- 7.6 Notwithstanding the foregoing, the Customer shall not be entitled to any remedy if (1) the price of the Products has not been paid in full; (2) Product defects are the result of the manufacture, packaging or delivery in accordance with the Customer's instructions; (3) unless otherwise permitted, Product defects are the result of the Customer's alteration, disassembly, modifications or repair without Delta's prior written authorization; (4) causes of action arise from Products that are used or operated in a way other than the intended purpose for which Products were designed; (5) any consumable component of the Product such as fuses causes the Product malfunctions; (6) causes of action arise from Products that have been in storage or immobilized for more than one year after delivery; (7) Product defects are the result of inappropriate Product selection for the environment and conditions in which they are to be used; (8) damages to Products are caused during shipping, or from any other accident after the Products have left Delta's facility.
- 7.7 This warranty is non-transferable and is applicable only to the original Customer. Delta may at its sole discretion provide warranty service to Customer's customers or end users upon request. This warranty shall not be extended, altered or modified except by written instrument executed by Delta.
- 7.8 All returns require a Return Material Authorization number ("RMA Number") regardless of reason for return. Returns without an RMA Number will be refused by Delta. Approval for return requests is at Delta's sole discretion. Customer must provide the following information at time of RMA request: Photo of fan motor label including fan part number and date code, Customer PO number, quantity to be returned and a brief description of failure for each unit, if different. All returns to Delta must be securely packed using original carton. All returns must have the RMA Number visible on outside of the carton. Delta is not responsible for material damaged in transit, nor for the cost of shipping returned Product to Delta.

8. CONFIDENTIAL INFORMATION

- 8.1 Unless otherwise stated in a separate Non-Disclosure Agreement executed by the parties, Customer acknowledges that all information and materials that come into Customer's possession or knowledge in connection with past and future purchases of Products from Delta and which has been marked, identified, and accepted as confidential or proprietary by the

circumstances of its disclosure and the improper disclosure or use of which will be damaging to Delta are confidential information ("Confidential Information").

- 8.2 Customer agrees to hold all Confidential Information in confidence, to disclose Confidential Information only to those of its employees having a need to know, and to not disclose Confidential Information to any other party. Customer agrees not to use any of Delta's Confidential Information without Delta's consent, and to the fullest extent permissible under applicable law, will not modify, reverse engineer, reverse-compile, reverse assemble, synthesize or in any way use any of Delta's Confidential Information for any purposes other than the intended purpose at the time of Delta's disclosure.

9. Indemnification

- 9.1 When Products are solely designed and made by Delta, Delta will defend the Customer in any claim against the Customer where it is asserted that a third party's valid and enforceable intellectual property rights in the country of delivery has been directly infringed by the Products ("Claim"). Delta will indemnify the Customer against the final judgment entered by a court of competent jurisdiction or for any settlements arising out of a Claim, provided that Customer (1) promptly notifies Delta in writing of the Claim within thirty (30) days after receiving such claims; and (2) cooperates with Delta in defense of the Claim by granting Delta full and exclusive control of the defense or settlement.
- 9.2 If a Claim is made or is likely to be made, Delta may, at its discretion, (1) procure for the Customer the right to continue using the Product; or (2) replace the Product with one that is non-infringing or modify a Product so that it becomes non-infringing. If Delta determines that none of those alternatives are commercially feasible, the Customer shall return the Products and Delta shall refund the Customer remaining net book value of the Product calculated according to generally accepted accounting principles.
- 9.3 Notwithstanding the above, Delta has no obligation to defend or indemnify any Claim against the Customer, and the Customer shall indemnify Delta for all losses and expenses arising out of any Claim brought by a third party against Delta where it is asserted that a third party's intellectual property rights have been infringed by the Products when (1) Delta has complied with designs, specifications, demands or instructions provided by the Customer or a third party on the Customer's behalf; (2) modification or alteration of a Product has been made by the Customer or a third party; (3) the Claim arises from Customer's combination use of the Product with non-Delta products, software or business processes; (4) the parts, raw materials or components consigned, designated or provided by Customer or a third party on Customer's behalf results in such Claim; (5) the Claim is based on an infringement of a (i) standard essential patent; or (ii) invalid or unenforceable patent; or (6) the Claim arises from any use of the Product beyond its intended use or general usage.
- 9.4 This Section constitutes Delta's entire obligation and the Customer's sole remedy regarding any third party claims for intellectual property infringement.

10. LIMITATION OF LIABILITY

- 10.1 Exclusion of Certain Damages. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL DELTA BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING BUT NOT LIMITED TO LOST PROFITS OR REVENUE, LOST DATA, LOSS OF USE,



LOST BUSINESS OPPORTUNITIES OR OTHER ECONOMIC ADVANTAGE, OR LOSS OF GOODWILL), LOSS OF POWER PRODUCTION, OR FOR THE COSTS OF PROCURING SUBSTITUTE PRODUCTS, ARISING OUT OF, RELATING TO OR IN CONNECTION WITH THESE TERMS AND CONDITIONS OR THE USE OR PERFORMANCE OF ANY PRODUCTS OR SERVICES PROVIDED BY DELTA, WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED UPON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE, WHETHER OR NOT DELTA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES. FOR THE AVOIDANCE OF DOUBT, THE PARTIES HEREBY EXPRESSLY AGREE THAT THE CATEGORIES OF DAMAGES DESCRIBED HEREIN CONSTITUTE SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES REGARDLESS WHETHER SUCH DAMAGES WOULD BE CONSIDERED DIRECT DAMAGES UNDER ANY APPLICABLE LAW GOVERNING THE PARTIES' AGREEMENT. THE PARTIES HAVE AGREED THAT THESE LIMITATIONS WILL SURVIVE AND APPLY EVEN IF ANY LIMITED REMEDY SPECIFIED HEREIN IS FOUND TO HAVE FAILED ITS ESSENTIAL PURPOSE.

- 10.2 Total Liability. DELTA'S TOTAL LIABILITY TO CUSTOMER UNDER THESE TERMS AND CONDITIONS, FOR ALL CAUSES OF ACTION AND UNDER ALL THEORIES OF LIABILITY, WILL BE LIMITED TO THE LESSER OF (1) ALL PAYMENTS ACTUALLY RECEIVED FROM CUSTOMER IN THE PRECEDING SIX (6) MONTHS FOR THE PARTICULAR PRODUCTS GIVING RISE TO SUCH LIABILITY, AND (2) \$1,000,000 USD.
- 10.3 Basis of Bargain. The parties expressly acknowledge and agree that Delta has set its prices and entered into this contractual relationship in reliance upon the limitations of liability specified herein, which allocate risk between the parties and form an essential basis of their bargain.

11. License and Ownership

- 11.1 To the extent a Product contains Delta-owned software, Delta hereby grants Customer a non-exclusive, non-transferable, non-sublicensable license to use the software and related documentation in the territory where the Product is received.
- 11.2 The Customer's use of the Product evidences its acceptance of this license and the Terms and Conditions.
- 11.3 Title to the software shall at all times remain with Delta.
- 11.4 The Customer acknowledges that the software, all enhancements, related documentation, trade secrets embedded in the software and the derivative works will remain the sole property of Delta.
- 11.5 The Customer agrees to treat the software and related documentation as confidential and agrees not to copy, reproduce, sub-license, or otherwise disclose the software and related documentation to third parties.
- 11.6 The Customer agrees not to disassemble, decompile, reverse engineer, create derivative works from or otherwise translate, customize, localize, modify, add to, or in any way, alter, rent, or loan the software or related documentation.

12. Non-Assignment

Customer may not assign any of its rights or obligations under the Terms and Conditions without the prior written consent of Delta.

13. Governing Law and Venue

- 13.1 These Terms and Conditions shall be governed, construed, interpreted and enforced in accordance with the laws of the State of California, U.S.A., without regard to any rules governing choice of laws. The 1980 United Nation Convention on Contracts for the International Sale of Goods does not

apply to these Terms and Conditions.

- 13.2 Any dispute, suit or action arising out of or relating to these Terms and Conditions or the sales of Products supplied by Delta, whether based in contract or tort, shall be exclusively submitted to the courts in San Jose, California.