



CONDITIONS OF SALE AND WARRANTY

Terms and Conditions

1. **Sale Not a Consumer Transaction:** Buyer agrees that the purchase of Delta's Products (hereinafter "Product") is not for consumer, household or family purposes.
2. **Agreement of Sale: Acceptance:** Any acceptance contained herein is expressly made conditional on Buyer's assent to any terms contained herein that are additional to or different from those proposed by Buyer in its purchase order and hence any terms and provisions of Buyer's purchase order which are inconsistent with the terms and conditions hereof shall not be binding on the Seller. Unless Buyer shall notify Seller in writing to the contrary as soon as practicable after receipt hereof, acceptance of the terms and conditions hereof by Buyer shall be deemed made and, in the absence of such notification the sale and shipment by the Seller of the goods covered hereby shall be conclusively deemed to be subject to the terms and conditions hereof.
3. **Entire Contract:** This contract constitutes the final and entire agreement between Seller and Buyer and any prior or contemporaneous understandings or agreements, oral or written are merged herein. The sales and technical representatives of the Seller are not authorized to make warranties about the product. Sellers representatives' oral statements do not constitute warranties, shall not be relied upon by the Buyer, and are not part of the contract for sale. Any product literature and operating instructions, and statements contained therein, do not constitute warranties, shall not be relied upon by the Buyer and are not part of the contract for sale. The entire contract is embodied in this writing and no other warranties are given beyond those set forth in this contract. This writing constitutes the final written expression of the parties agreement, and it is a complete an exclusive statement of the terms of the agreement.
4. **Prices:** Except where expressly agreed, all prices are subject to change without notice. If there is a delay in approval of drawings related to this contract beyond 30 days, an escalation in selling price may occur due to a rise in labor and/or material prices.
5. **Taxes:** The price of goods does not include sales, use, excise, ad valorem, property or other taxes now or hereinafter imposed, directly or indirectly by any governmental authority or agency with respect to the manufacture, production, sale, delivery, consumption or use of goods covered by this contract. Buyer shall pay such taxes directly or reimburse Seller for any such taxes which it may be required to pay.
6. **Payment:** The specific terms of payment are as specified in writing by Seller. If the Buyer shall fail to make any payments in accordance with the terms and provisions hereof, the Seller, in addition to its other rights and remedies, but not in limitation thereof, may, at its option, defer shipments or deliveries hereunder, or under any other contract with the Buyer, except upon receipt of satisfactory security or of cash before shipment.
7. **Shipment; Risk of Loss Title:** The goods shall be shipped FOB Seller's shipping points. Risk of loss shall pass to Buyer upon delivery to the carrier. Title shall pass to Buyer on delivery to the carrier.
8. **Delivery; Delays in Deliveries:** The date of delivery provided herein is an approximation based on Seller's best judgement. Seller shall be excused for delay in delivery, may suspend performance and shall under no circumstances be responsible for failure to fill any orders when due to acts of God or of the public enemy; fires; floods; riots; strikes; freight embargos or transportation delays; shortage of labor; inability to secure fuel; material supplies, or power at current prices or on account of shortages thereof; any existing or future laws or acts of the Federal or of any State Government (including specifically, but not exclusively, any orders, rules or regulations issued by any official or agency of any such government).

9. **LIMITED WARRANTY:** Seller warrants that the cylindrical, seamless molded polyethylene shell of the Product shall be free from defects in materials and workmanship and will not peel, chip, rust or need painting for a period of fifteen (15) years from the date of shipment. Since the Product once in operation is under the sole control of the User, this warranty is further subject to and shall be applicable only if all of the following conditions are met:
 - a. The Product has been properly erected in accordance with the Seller's instructions and in accordance with good installation practices;
 - b. Seller's instructions and recommendations as to operation and maintenance have been followed, including those contained in the manual furnished with the Product;
 - c. The Product has been used under normal operating conditions;
 - d. The Product has not been affected by misuse, neglect, accident or abrasion;
 - e. The User has not attempted or performed corrective work on the Product without Seller's prior written consent; and
 - f. The Seller shall have received notice of any defect no later than 10 days after User first has knowledge of same.

Except where expressly noted otherwise, Seller warrants all Product components, other than moving parts, against defects in workmanship and material for a period of one (1) year from the date of shipment, provided the equipment has been properly maintained and operated under normal conditions. Motors and blowers carry a normal manufacturer's one (1) year warranty against defects in workmanship and materials beginning from the date of shipment and subject to the same conditions of proper use and operation as other components of the Product. Bearings, pulleys, belts or other moving parts and components are sold without any warranty.

10. **DISCLAIMER OF ALL OTHER WARRANTIES AND GUARANTEES:** The aforesaid warranty is the sole and only warranty or guarantee relating to the product provided under this Agreement, and is in substitution for, and in lieu of, any and all other warranties, written or oral, expressed, implied or statutory including any warranty of merchantability or of fitness for a particular purpose.

11. **CORRECTION OF DEFECTS AS SOLE REMEDY:** If the Buyer/User gives the Seller written notice of defects in the product within any period of warranty described herein and the Seller's inspection confirms the existence of such defect, the Seller, at its option, shall correct the defect or defects either by repair, providing repair tools and instructions, or replacement, FOB Seller's shipping point, or refund the purchase price of the product. The remedies provided Buyer/User herein for breach of Seller's warranty shall be exclusive.

No expense, liability or responsibility will be assumed by the Seller for repairs made by other than Seller's agent without written authority from the Seller. Remedial action, in the manner and for the period of time provided above, shall constitute fulfillment of all liabilities of Seller to the Buyer / User, and Buyer/User's sole remedy hereunder, whether based on contract, tort or otherwise.

The sole purpose of stipulated exclusive remedy shall be to provide the User with free repair and replacement of defective parts in the manner provided herein. This exclusive remedy shall not be deemed to have failed of its essential purpose so long as the Seller is willing and able to repair or replace defective parts in the prescribed manner. An action for breach of this limited warranty or any other action otherwise arising out of this contract must be commenced within one (1) year from the date the right, claim, demand or cause of action shall first occur, or be barred forever.

12. **STATEMENT OF BUYER/USER'S RESPONSIBILITIES:** It is the sole responsibility of the Buyer/User, and not in any manner the responsibility of the Seller, to test, control and properly dispose of all discharges, both gaseous and liquid, from the product to assure:

- a. Compliance with all federal, state and municipal (or any political subdivision thereof) statutes, laws, codes, ordinances, rules and regulations concerning the environment, including but not limited to: The Clean Air Act, 42 U.S.C. S7401 *et seq.*; The Clean Water Act, 33 U.S.C. S1251 *et seq.*; The Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. S9601 *et seq.*; The Toxic Substance Control Act, 15 U.S.C. S2601 *et seq.*; The Resource Conservation and Recovery Act, 42 U.S.C. S6901 *et seq.*; The Safe Drinking Water Act, 21 U.S.C. S349 *et seq.*; The National Environmental Policy Act, 42 U.S.C. S4321 *et seq.*; Occupational Safety and Health Act, 29 U.S.C. S651 *et seq.*; together with any amendments thereto and regulations promulgated thereunder;
- b. Adequate protection for the health and safety of people, property, wildlife and environment; and
- c. Adequate protection for all persons, including employees, coming in contact with the Product and its discharges for all purposes including, without limitation, installation, maintenance, use and repair of the Product.

It is also the sole responsibility of the Buyer/User to:

- d. Maintain the Product in accordance with the "Installation, Operating and Maintenance Instructions";
- e. Comply with the maintenance checklist contained in the "Installation, Operating and Maintenance Instructions"; and
- f. Periodically monitor and test the Product to verify proper functioning, and to insure the Product performs properly.

It is further the sole responsibility of the Buyer/User to comply with all laws, codes, and regulations relating to the Product and its use and Seller makes no warranty or representation with respect thereto.

Buyer/User assumes the responsibility for providing and installing all devices required to protect the health and safety of people, property, wildlife and the environment.

Buyer/User acknowledges having read the "Installation, Operating and Maintenance Instructions", including all warnings contained therein, and is aware of the precautions recommended for protection to the health and safety of people, property, wildlife, and the environment, including employees coming in contact with the Product discharges.

Buyer/User assumes full responsibility to assure proper use of the Product, including the determination and control of what chemicals, pollutants and toxic substances are introduced into the product, and the determination and control of all discharges from the Product.

13. **DISCLAIMER OF TORT, CONTRACT, STATUTORY AND ALL OTHER LIABILITY:** The Seller hereby disclaims all tort, contract or statutory liability to the Buyer/User, and any other basis of liability to Buyer/User regarding claims for injury or damage to people, property, wildlife, or the environment, including, without limitation, claims of negligence, strict product's liability, breach of warranty (except the limited warranties as provided in paragraph 9 entitled: "Limited Warranty"), breach of contract or violation of statute, law, ordinance, code, rule or

Delta Cooling Towers

regulation. Seller also disclaims any liability to the Buyer/User in contribution or indemnification for the Buyer/User's liability or alleged liability to any third person or entity for injury or damage to people, property, wildlife or the environment. Without limiting the generality of the foregoing, Seller disclaims liability for all claims for compensatory, consequential, incidental or other damages and for damages for personal injury and property damage, loss of use, revenue or profit, injury to good will, inability to fulfill contracts to third parties, other economic loss, response costs and other environmental clean-up costs or other damages arising out of the actual, alleged or threatened discharge, dispersal, release or escape of pollutants, contaminants, hazardous waste, or liquid or gaseous materials discharged from or through the Product and any loss, cost or expense arising out of any governmental or other direction or request to test for, monitor, clean-up, remove, contain, treat, detoxify or neutralize the foregoing.

Seller also disclaims liability for all claims for damages arising from the actual or alleged violation of any federal, state, municipal (or political subdivision thereof) statute, law, ordinance, code, rule or regulation relating to the environment, including but not limited to: The Clean Air Act, 42 U.S.C. §7401 *et seq.*; The Clean Water Act, 33 U.S.C. §1251 *et seq.*; The Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601 *et seq.*; The Toxic Substances Control Act, 15 U.S.C. §2601 *et seq.*; The Resource Conservation and Recovery Act, 42 U.S.C. §6901 *et seq.*; The Safe Drinking Water Act, 21 U.S.C. §349 *et seq.*; The National Environment Policy Act, 42 U.S.C. §4321 *et seq.*; Occupational Safety and Health Act, 29 U.S.C. §651 *et seq.*; together with any amendments thereto and regulations promulgated thereunder.

Seller further disclaims any liability, direct or indirect, resulting from the Buyer/User's failure to fulfill the responsibilities enumerated in the preceding paragraph entitled "Statement of Buyer/User's Responsibility" including without limitation:

- a. Buyer/User's failure to comply with statutes, laws, codes, rules and regulations relating to the Product and the environment; and
- b. Buyer/User's failure to provide and install all devices required for the protection of the safety and health of people, property, wildlife and the environment and all persons, including employees of the User coming in contact with the Product and its discharges; and
- c. Buyer/User's failure to adhere to the "Installation, Operating and Maintenance Instructions" and the product literature, including all warning contained therein;
- d. Buyer/User's failure to test and monitor the functioning of the Product; and
- e. Buyer/User's failure to determine and control the safety and cleanliness of discharged effluents, both gaseous and liquid, from the Product.

14. **EXCULPATORY AND INDEMNIFICATION**

AGREEMENT: Buyer/User hereby agrees that the Seller will not be liable to the Buyer/User for the matters referred in paragraph 13 entitled "Disclaimer of Tort, Contract, Statutory and All Other Liability."

This exculpatory agreement applies even if the defect and/or loss, damage or injury to persons, property, wildlife and the environment resulted solely or in part from the Seller's actual or alleged negligence, breach of warranty, violation an statute, law, ordinance, rule or regulation, or actions resulting in strict liability.

The Buyer/User hereby agrees to defend, hold harmless and indemnify the Seller and Seller's agents from and against all claims, suits, actions, and liabilities for injury or damage to people, property, wildlife, or the environment, including, without limitation, claims of negligence, strict products liability, breach of warranty (except the limited warranties provided in paragraph 9 entitled "Limited Warranty"), breach of contract or violation of statute, law, ordinance, code, rule or regulation. The Buyer/User hereby agrees to defend, hold harmless and indemnify the Seller and Seller's agents from and against all claims, suits, and actions including claims for contribution or indemnification for another's liability or alleged liability to any third person or entity for injury or damage to people,

property, wildlife or the environment.

Without limiting the generality of the foregoing, the Buyer/User hereby agrees to defend, hold harmless and indemnify the Seller and Seller's agents from and against all claims, suits, actions, and liabilities for compensatory, consequential, incidental or other damages and for damages for personal injury and property damage, loss of use, revenue or profit, injury to good will, inability to fulfill contracts to third parties, other economics loss, reponse costs and other environmental clean-up cost or other damages arising out of the actual, alleged or threatened discharge, dispersal, release or escape of pollutants, contaminants, hazardous waste, or liquid or gaseous materials discharged from or through the Product and any loss, cost or expense arising out of any governmental or other direction or request to test for, monitor, clean-up, remove, contain, treat, detoxify or neutralize the foregoing.

The Buyer/User hereby agrees to defend, hold harmless and indemnify the Seller and Seller's agents from and against all claims, suits, actions, and liabilities for damages arising from the actual or alleged violation of any federal, state, municipal (or political subdivision thereof) statute, law, ordinance, code, rule or regulation relating to the environment, including but not limited to: The Clean Air Act, 42 U.S.C. §7401 *et seq.*; The Clean Water Act, 33 U.S.C. §1251 *et seq.*; The Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601 *et seq.*; The Toxic Substances Control Act, 15 U.S.C. §2601 *et seq.*; The Resource Conservation and Recovery Act, 42 U.S.C. §6901 *et seq.*; The Safe Drinking Water Act, 21 U.S.C. §349 *et seq.*; The National Environment Policy Act, 42 U.S.C. §4321 *et seq.*; Occupational Safety and Health Act, 29 U.S.C. §651 *et seq.*; together with any amendments thereto and regulations promulgated thereunder.

The Buyer/User hereby agrees to defend, hold harmless and indemnify the Seller and Seller's agents from and against all claims, suits, actions, and liabilities, direct or indirect, resulting from the Buyer/User's failure to fulfill the responsibilities enumerated above in number 12 entitled "Statement of Buyer/User's Responsibilities" as if the Buyer were the User as referred to therein, including without limitation:

- a. Buyer/User's failure to comply with statutes, laws, codes, rules and regulations relating to the Product and the environment; and
- b. Buyer/User's failure to provide and install all devices required for the protection of the safety and health of people, property, wildlife and the environment and all persons, including employees of the User coming in contact with the Product and its discharges; and
- c. Buyer/User's failure to adhere to the "Installation, Operating and Maintenance Instructions" and the product literature, including all warning contained therein;
- d. Buyer/User's failure to test and monitor the functioning of the Product; and
- e. Buyer/User's failure to determine and control the safety and cleanliness of discharged effluents, both gaseous and liquid, from the Product.

The Buyer/User hereby agrees to defend, hold harmless and indemnify the Seller and Seller's agents from and against all claims, suits, actions, and liabilities as enumerated above without limitation even if said claims, suits, actions, and liabilities are based upon actual or alleged negligence, breach of warranty (other than the limited warranty provided in paragraph 9 entitled "Limited Warranty"), violation of any law, statute, ordinance, rule or regulation, or any other basis of liability on the part of Seller or Seller's agents.

15. **Assignment:** No right or interest in this contract shall be assigned by Buyer/User without prior written agreement by the Seller. No delegation of any obligation by the Buyer/User shall be made without prior written agreement by the Seller.
16. **Modifications; waiver:** No Waiver, alteration or modification of any of the provisions hereof shall be binding on the Seller unless made in writing and agreed to by a duly authorized official of the Seller. No waiver by the Seller of any one or more defaults by the Buyer/User in the performance of any provision of this contract shall perate or be construed as a waiver of any future default or defaults whether of a like or of a different character.
17. **Changes & Improvements:** Seller reserves the right to make changes, and improvements in its Products at any time without notice. Where such change and improvements have been made, Seller

shall not be obligated to incorporate such changes and improvements in Products previously sold to any customer, nor shall Seller be obligated to replace previously sold products with products incorporating such changes and improvements.

18. **Return of Goods:** Where Seller has provided prior written authorization, Seller will accept the return for credit or exchange of products which have been made to the specifications set forth in its catalogs and other literature, provided the product has not been altered or damaged. Products returned for credit will be subject to a 20% restocking charge. Return products must be shipped prepaid to Seller at the location noted in written authorization.
19. **Technical Services:** Upon request of Buyer/User, Seller will endeavor to furnish such technical advice as it has available in reference to the use of its products. Any technical advice furnished by Seller with reference to the use of its products is given and accepted at Buyer/User's risk and the Seller assumes no obligation or liability for the advice given or results obtained.
20. **APPLICABLE LAW:** The validity, interpretation and performance of all terms, conditions, warranties, disclaimers, indemnification and exculpatory provisions, and all other provisions described herein, and any purchase or sale made hereunder shall be governed by the law of New Jersey in force at the date this contract is made. Where not modified by the terms herein, the provision of Article 2 of the Uniform Commercial Code as enacted by the State of New Jersey shall apply to this transaction.
21. **SEVERABILITY:** If any provision or clause of this contract or application thereof to any person or circumstances is held invalid or unconscionable such invalidity or unconscionability shall not affect other provisions or applications of the contract which can be given effect without the invalid or unconscionable provision or application, and to this end the provisions of the contract are declared to be severable.
22. **WAIVER:** If the Seller, at its option, agrees to a waiver of any of the terms and conditions recited herein, such waiver shall not for any purpose be construed as a waiver of any succeeding breach of the same or any other terms or conditions of said contract; nor shall such a waiver be viewed as a course of performance.
23. **BUYER/USER'S ACKNOWLEDGMENT:** User/Buyer acknowledges that he has read both sides of this contract and accepts its terms.