

DELTA FAUCET COMPANY
STANDARD TERMS AND CONDITIONS OF SALE
January 2013

We have set out in this document our basic terms and conditions (together with any conditions contained in the quotation, if any, we previously furnished to you, "**Terms**") that will exclusively govern the sale of our products to you ("**Transaction**"). If you provide us with any pre-printed terms and conditions that appear on any purchase order or other form document, they are rejected and will be of no force or effect. These Terms are deemed a part of and incorporated by reference into our published Price List, as it is revised from time to time ("**Price List**"), and all other documents exchanged between us relating to the sale and purchase of our products, whether electronic or in writing, including, without limitation, all quotations, acknowledgements, packing slips, invoices and purchase orders.

1. APPLICATION OF TERMS. Our acknowledgement and acceptance of your order for our products is expressly limited to and made conditional upon your acceptance of these Terms. We deem material, object to and reject any of your terms and conditions that are in addition to or different from these Terms unless we have expressly agreed to them in writing (other than additional provisions specifying quantity, description of the products ordered and shipping instructions). Unless otherwise agreed in writing, we will deem you to have waived any objection to these Terms if we have not received written notice of such objection within ten (10) days of the date of your order. In any event, you will be deemed to have agreed to these Terms if you accept any portion of the products you order from us.

You acknowledge that the prices we have quoted are predicated on the enforceability of these Terms, that the price would be substantially higher if these Terms did not apply, and that you accept these Terms in exchange for such lower prices.

2. DISCLAIMER OF WARRANTY. We extend express, written warranties on our products in accordance with the terms, conditions and limitations of the applicable warranty ("**Warranty**") set forth on our Web Site (www.deltafaucet.com or such other address as may be identified on the Product Documents) and/or the applicable product packages, labels and instruction sheets ("**Product Documents**"). Fulfillment of our Warranty obligations to the purchasers of our products (or their permissible transferees) is our sole warranty obligation for our products. EXCEPT AS EXPRESSLY PROVIDED IN OUR WARRANTY, WE DISCLAIM ALL WARRANTIES TO YOU, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

3. LIMITATION OF REMEDIES. Your sole and exclusive remedy against us for any breach of our obligations in a Transaction or based on any other theory of liability will be limited to, at our option, our repair or replacement of any nonconforming product for which you make a claim or our issuance of a credit for such nonconforming product in accordance with these Terms, the Warranty and any instructions we may give you for the return of the product or otherwise. You must obtain a return authorization from us and give us a reasonable opportunity to inspect the product and confirm the nonconformity. This exclusive remedy will not be deemed to have failed of its essential purpose so long as we are willing and able to repair or replace the nonconforming product and, in any event, our liability for any damages due you will be limited to the then-current wholesale price of the nonconforming products, regardless of whether other damages were foreseeable. THIS PARAGRAPH STATES YOUR SOLE AND EXCLUSIVE REMEDY.

4. LIMITATIONS ON ACTIONS AND LIABILITY. You agree that all of your claims arising under these Terms or a Transaction will only be valid for one (1) year from the date of your purchase. WE WILL NOT BE LIABLE FOR ANY LOSS, DAMAGE OR INJURY RESULTING FROM DELAY IN DELIVERY OF THE PRODUCTS OR FOR ANY FAILURE TO PERFORM WHICH IS DUE TO CIRCUMSTANCES BEYOND OUR CONTROL OR THE CONTROL OF OUR SUPPLIERS, INCLUDING WITHOUT LIMITATION FAILURE OR DELAY IN TRANSPORTATION, ACTS OF ANY GOVERNMENT OR ANY AGENCY OR SUBDIVISION THEREOF, JUDICIAL ACTION, LABOR DISPUTES, FIRE, ACCIDENT, ACTS OF NATURE, SHORTAGE OF LABOR, FUEL OR RAW MATERIAL, OR MACHINERY OR TECHNICAL FAILURE. OUR MAXIMUM LIABILITY, IF ANY, FOR ALL DAMAGES, INCLUDING WITHOUT LIMITATION CONTRACT DAMAGES AND DAMAGES FOR INJURIES TO PERSONS OR PROPERTY, WHETHER ARISING FROM OUR BREACH OF THESE TERMS, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY OR OTHER TORT WITH RESPECT TO THE PRODUCTS, IS LIMITED TO AN AMOUNT NOT TO EXCEED THE THEN-CURRENT WHOLESALE PRICE OF THE PRODUCTS. IN NO EVENT WILL WE BE LIABLE TO YOU FOR ANY INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION LOST REVENUES AND PROFITS, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. YOUR RIGHT TO RECOVER DAMAGES WITHIN THE LIMITATIONS SPECIFIED IN THIS **PARAGRAPH 4** IS YOUR EXCLUSIVE ALTERNATIVE REMEDY IN THE EVENT THAT THE REMEDY IN **PARAGRAPH 3** FAILS OF ITS ESSENTIAL PURPOSE.

5. PRICES, TERMS, SHIPMENT AND DELIVERY SCHEDULES. Unless we otherwise agree in writing, or as may otherwise be provided on the face of our invoice, you will pay the prices for the products in effect at the time of shipment and all prices are Net 30 Days. No cash discount is allowed unless we otherwise specify to you in writing, and you may not setoff or assert a counterclaim unless we agree in writing. In addition to the prices specified, you agree to pay any federal, state or local excise, use, occupational or similar tax now in force or to be enacted in the future, assessed against you or us due to a Transaction. Unless we otherwise agree in writing, shipments will be by a carrier and by the route selected by us; the carrier will act as your agent; delivery by us to such carrier will constitute delivery to you; and all shipments under your order will be made F.O.B. our shipping point, at which time title and all risk of loss will pass to you, provided that we will retain, and you hereby grant to us, a security interest in any products we ship to you until the full purchase price is paid by you. You will pay all freight charges and assume the risks of transportation, including delay, damage and loss, unless we otherwise agree in writing. The promised delivery date is our best estimate possible of when we will ship the products.

6. VARIATIONS IN QUANTITIES, SHORTAGES AND ALLOCATION. Deliveries scheduled to be made by us over an extended number of shipments may vary from your order in quantities not to exceed ten percent (10%), plus or minus, of each product involved (unless otherwise agreed to in writing) and we will adjust the billing accordingly. You must make all claims for shortages within fifteen (15) days of your receipt of shipment. We will not be responsible for any claim for shortage not reported within that period. In the event of a shortage or other contingency due to circumstances beyond our control or the control of our suppliers, we may allocate production and deliveries among our customers in such manner as we determine in our sole discretion.

7. PATENT OR TRADEMARK INFRINGEMENT. If the products we sell to you are manufactured according to your specifications, you will defend, hold harmless and indemnify us against any claims, liability, costs or attorneys' fees incurred in relation to any claim arising out of your specifications or design, including any claims for patent, trademark or other intellectual property infringement.

8. CONFIDENTIALITY. If your personnel visit our facility(ies) or you otherwise receive any proprietary or non-public information from us, you will retain and treat such information as confidential and will not use or disclose such information to any third party without our prior written consent.

9. CREDIT APPROVAL AND PAST DUE ACCOUNTS. You will furnish to us all financial and related information reasonably requested by us from time to time for the purpose of establishing or continuing your credit limit. Shipment and delivery of products will at all times be subject to the approval of our credit department and we may at any time decline to make any shipment or delivery except upon receipt of payment, your providing security acceptable to us or upon other terms and conditions satisfactory to us. You agree that we may file a uniform commercial code financing statement with respect to the products we sell to you in order to protect our interest in such products until you make payment in full. We will be entitled to collect from you interest on all past-due accounts at the rate of 1.5% per month, not to exceed the maximum rate of interest allowed by law.

10. CANCELLATION AND RETURNED GOODS. You may cancel orders only with our written approval. You will need our approval, and our issuance of a return authorization, before returning any products to us. If you cancel an order, in whole or in part, that incorporates special material, parts, components or other items that we do not typically buy, sell or use in connection with our standard product offerings (i.e., a nonstandard special order), you will pay us: (a) the previously agreed upon price of all completed items; (b) that portion of the agreed upon price that is equal to the greater of our actual cost or the percentage of completion of products in process, effective on the date we receive your notice of cancellation; (c) the cost of any materials and supplies that we have purchased in order to perform and which we cannot use for other or similar purposes or readily resell at our full cost; and (d) charges for cancellation of tool orders or tool removal charges.

11. DEFAULT. If we default on a material obligation, you will provide written notice to us specifying our default and we shall have thirty (30) days to remedy such default. If such default is not excusable under any provision of these Terms, and we have not remedied such default within thirty (30) days after our receipt of such notice of default, you may terminate the uncompleted portion of the Transaction, in whole or in part, by providing fifteen (15) days' prior written notice of termination to us, during which we shall have the right to cure such default. If we deliver nonconforming products to you, you will have the rights set forth in **Paragraph 3** of these Terms but such delivery will not be deemed a default for which our performance may be terminated.

12. ASSIGNMENT. You cannot assign any order or any claim against us arising directly or indirectly out of or in connection with an order without our prior written consent. We may assign, without consent, any Transaction and these Terms to any subsidiary or affiliate of ours or of Masco Corporation or to an entity or person that acquires all or substantially all of the business to which the Transaction and these Terms relate.

13. **PATENTS, INVENTIONS, TECHNICAL DATA AND INDEMNIFICATION.** You do not and will not acquire ownership of or any other rights in our patents, inventions, technical data and/or other intellectual property (such as brands, trade names and copyrights) under any order, regardless of when such patents, inventions, technical data and/or other intellectual property may be or have been issued, conceived, generated or produced. We reserve all of our rights in our patents, inventions, technical data and/or other intellectual property and you will not reproduce or use it for any purpose whatsoever without our prior written permission. We may provide technical assistance and information to you in connection with the sale of our products but such technical assistance and information are furnished for your accommodation and you are solely responsible for your business, including the application of such information, using your own technical expertise and know-how. You shall indemnify, defend and hold harmless us and our affiliates, and their respective officers, directors, employees and agents, from and against all liabilities, losses, claims, costs and expenses (including reasonable attorneys' fees) related to any claim, investigation, litigation or proceeding (whether or not we are a party) that arises or is alleged to arise from your acts or omissions under these Terms or in any way with respect to our products.

14. **NONCONFORMING FURNISHED PARTS AND/OR MATERIALS.** We will not be responsible, and all risk of loss, damage or destruction or deterioration will pass to you, for any parts and/or materials that you furnish to us that do not conform to specifications, that have been damaged or for any other reason are unsuitable for further processing. You will indemnify, defend and hold harmless us and our affiliates from any claim, such as damage to our facilities or equipment, arising from such parts or materials. We will be entitled to charge you for storage of such parts and/or materials if you have not removed them from our premises within ten (10) days after we give such notice to you.

15. **REMEDIES.** Our rights and remedies will be cumulative and additional to all other remedies provided by law or equity. We will be entitled to recover costs and attorneys' fees in the enforcement or defense of any rights under these Terms or with respect to any Transaction.

16. **PROGRAMS.** All allowances, rebates, incentives and/or other amounts that we offer to you from time to time (collectively "**Programs**") are earned and payable only if your accounts (including those of your subsidiaries and affiliates) are current with us, Masco Corporation and our respective subsidiaries and affiliates. In addition, Programs are not earned or payable if the ratings issued by any agency, such as S&P, Moody's or Fitch, relating to your company or your parent, subsidiaries or affiliates are lower than investment grade quality. Any earned payment may be withheld or be used to satisfy any of the accounts or other obligations to us, Masco Corporation and/or our respective subsidiaries and affiliates.

17. **GOVERNING LAW AND FORUM.** These Terms and each Transaction will be construed and interpreted, and the rights of the parties determined, in accordance with the laws of the State of Indiana without regard to any conflict of laws provisions that might otherwise apply. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to these Terms or any Transaction. You agree to exercise any right or remedy in connection with these Terms or your orders exclusively in, and you agree to submit to the jurisdiction of, the appropriate state or federal court of Marion County, State of Indiana.

18. **ENTIRE AGREEMENT.** These Terms contain our entire agreement relating to each Transaction. These Terms may not be waived, changed, modified, extended or discharged except by an agreement in writing that is signed by an authorized representative of the party against whom enforcement of any such waiver, change, modification, extension or discharge is sought.