

1. **General**
  - 1.1 All assemblies, maintenance works and repairs ('Services') undertaken by INFICON Ltd (INFICON) are subject to these terms and conditions. Putting a facility into operation and giving instruction as to its use are not part of the assembly process. Should the facility be put into operation by INFICON, the following relevant conditions apply.
  - 1.2 These terms and conditions and any document referred to herein constitutes the entire agreement between the parties. The Buyer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of INFICON which is not set out in the Contract.
  - 1.3 Any samples, drawings, descriptive matter or advertising issued by INFICON, and any descriptions or illustrations contained in INFICON's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.
  - 1.4 These terms and conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
2. **Offers / Confirmation of order**
  - 2.1 Quotes and estimates from INFICON are not offers and are not binding.
  - 2.2 An offer is made by the Customer to INFICON in writing. The offer is accepted when the written request is acknowledged in writing by INFICON.
  - 2.3 Any modification to an offer constitutes a new offer which shall only be deemed to be accepted when INFICON issues written acceptance.
  - 2.4 The date of acknowledgment by INFICON is the Commencement Date.
3. **Supply of Services, Personnel requirement, Deadlines, Risk**
  - 3.1 INFICON shall supply the Services to the Customer in accordance with the technical requirements in all material respects.
  - 3.2 INFICON shall use all reasonable endeavors to meet any performance dates, estimated by INFICON on the basis of previous experience, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
  - 3.3 Should Services be delayed or be required to be recommended due to a Force Majeure Event, as defined in clause 13.1 below, the deadline shall be appropriately extended or adapted as required, even if INFICON finds itself behind schedule at the time the Force Majeure Event occurs. The customer is liable for unavoidable costs including for any waiting period or further journeys undertaken by INFICON personnel, arising as a result of the delay. Should waiting periods occur, INFICON has the right to recall its personnel.
  - 3.4 In the event of Force Majeure, INFICON has the right to demand the agreed price less the value of the work not performed. The parties may agree that the work be recommended in so far as it is reasonable and convenient to do so. To recommend the work will incur new remuneration based on the current prices charged by INFICON.
  - 3.5 INFICON shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and INFICON shall notify the Customer in any such event.
  - 3.6 INFICON warrants to the Customer that the Services will be provided using reasonable care and skill.
4. **Prices**
  - 4.1 Prices for Services are charged in accordance with the prices in force at the time the work is carried out and is confirmed in the acknowledgment from INFICON. Charges include travel costs with incidental expenses, remuneration for Services, daily allowances, remuneration for set-up and disassembly times. INFICON reserves the right to apply additional charges where there are unforeseen additional technical issues or difficult working conditions e.g. where work is injurious to health, particularly dirty, dangerous or subject to particular heat, and in the case of repairs the price of exchanged or newly installed parts, the costs of their transport and other incidental costs will also be charged.
  - 4.2 The prices for replacement parts, newly installed parts and other material costs are quoted according to INCOTERMS 2010 including packing but excluding erection and start-up. If the customer does not expressly request otherwise, INFICON insures the replacement parts etc. required by INFICON for Services outside its works at the expense of the customer against the usual transport risks including damage by breakage.
5. **Terms of Payment**
  - 5.1 Unless otherwise provided for in the offer/contract confirmation from INFICON, payments are due on receipt of invoice.
  - 5.2 Payments are to be made in full, and clear funds to the payments office of INFICON as set out on the Invoice. Fees, charges or other costs which may be accrued by INFICON through a separately agreed discounting of bills or checks shall be borne by the customer. In the event of replacement parts being used in the Services, title will not pass until payment has been made.
  - 5.3 The retention of or deduction from payments because of complaints, disputes or claims on the part of the customer which have not been expressly agreed by INFICON is prohibited. The customer may only set off possible counterclaims against payments due under this contract where INFICON has expressly agreed to the same in writing.
6. **Customer's Obligations**
  - 6.1 The customer shall ensure that the terms of the Order and any information it provides in the Specification are complete and accurate.
  - 6.2 At its own expense, the customer will support the personnel from INFICON in the implementation of the work, including providing INFICON and its personnel such information and materials as reasonably required to supply the Services and ensure that such information is accurate in all material respects, and providing any required technical assistance. The technical assistance provided by the customer must guarantee that the Services can commence promptly and can be carried out without delay until completion of the Services. In as far as particular plans and instructions are required from INFICON; it will make these available to the customer in good time.
  - 6.3 Prior to the commencement of the work, the customer shall obtain and maintain all necessary licenses, permissions and consents which may be required and make available the necessary materials at the site to the extent that the work can be carried out promptly. If requested and required, the customer will provide assistance to INFICON personnel in finding appropriate accommodation and assist with regard to obtaining necessary documentation from the local public authorities.
7. **Services of facilities from other suppliers**
  - 7.1 If facilities receive components from other suppliers, for which special personnel is required by the production firm, INFICON is prepared, if desired by the customer, to arrange the assembly of the components according to the conditions stipulated by the production firm.
  - 7.2 The supply of Services of facilities or parts thereof not belonging to INFICON's scope of delivery and the maintenance, repair and alteration of components delivered by other suppliers require in each case a separate agreement.
8. **Completion of Services**
  - 8.1 Where the Services are provided at the Customer's place of business, INFICON will complete a work report to be signed by the Customer once the Services have been completed. If the work report is not signed by the Customer within 2 weeks of it being presented and no issues are raised by the Customer, the Services are thereafter deemed to be accepted.
  - 8.2 Where the Services are provided at an INFICON factory the Services are deemed to be accepted as in good order on delivery to the Customer. The Customer is obliged to inspect the repair work as soon as practicable after delivery and inform INFICON immediately of any defects.
  - 8.3 Should the performance of the Services not conform to the agreed technical requirements, INFICON is obliged to correct any defects. This does not apply if the defect is due to circumstances attributable to the customer. If the defect is not material, the customer cannot refuse receipt or reject completion.
  - 8.4 Once the Services are complete and/or accepted, INFICON is no longer liable for any discernible defects in so far as the customer has not reserved the right of redress in relation to a specific defect. Any defects in relation to Services which have been carried out at an INFICON factory must be notified to the courier immediately on delivery save for where the defect is not discernible until a later time.
9. **Warranties**
  - 9.1 INFICON warrants correcting defects in the Services. The customer is obliged to report any defect to INFICON immediately.
  - 9.2 The customer's statutory rights in case of any failed correction of defects are unaffected.
  - 9.3 The customer will grant INFICON reasonable time and authorization required for the improvements deemed necessary by INFICON; otherwise INFICON is released from liability for defects. The customer is precluded from correcting any defect itself or to engage any third party to do so save for in an emergency. For the purposes of this clause, emergency means circumstances where the safety of operation is jeopardized, where there is a risk of excessive damages being incurred or where INFICON are unreasonably delayed in remedying the damage. In such circumstances and in order to recover the direct costs of such correction the customer must inform INFICON immediately. All other cases costs are borne by the customer.
  - 9.4 The warranty period for claims regarding defects of the Services is twelve months following completion of the Services.
  - 9.5 Warranty claims will only be accepted if the required maintenance and care procedures were carried out and documented.
10. **Limitation of Liability**
  - 10.1 Nothing in these Conditions shall limit or exclude liability for:
    - (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
    - (b) fraud or fraudulent misrepresentation; or
    - (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
  - 10.2 Subject to clause 10.1:
    - (a) INFICON shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
    - (b) INFICON's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall not exceed the amount agreed to be paid for the Services and as confirmed in the acknowledgment of order.
  - 10.3 The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
  - 10.4 This clause 10 shall survive termination of the Contract.
11. **Termination**
  - 11.1 The customer can terminate the contract in the event that INFICON is unable to complete all work prior to receipt by the customer. Remuneration payable to INFICON may be reduced if the performance of part of the work proves impossible; if the customer has a justified interest in the rejection of a part performance of work, sentence 1 applies. If a reduction is agreed for part-performance, payments already made may be refunded.
  - 11.2 Should performance not be possible at the fault of the customer, the customer remains obliged to pay remuneration and charges to INFICON as if the contract had been performed in full including, where applicable, any expenses incurred as a result of the contract being terminated early. The same applies in the case of default in taking delivery, in so far as INFICON is not responsible for such default.
  - 11.3 Should performance not be possible at the fault of INFICON, taking into account any agreed extension of time the customer is entitled to terminate the contract.
  - 11.5 On termination of the Contract for any reason:
    - (a) the Customer shall immediately pay to INFICON all of INFICON's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, INFICON shall submit an invoice, which shall be payable by the Customer immediately on receipt;
    - (b) the Customer shall return all of the Supplier Materials and any Deliverables which have not been fully paid for. If the Customer fails to do so, then INFICON may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
    - (c) the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall be unaffected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
    - (d) clauses which expressly or by implication survive termination shall continue in full force and effect.
12. **Insurance**
  - 12.1 Each Party shall maintain such policies of insurance as it is required to hold by English law including public liability insurance in the sum of £1,000,000.
  - 12.3 Each party shall (if requested in writing by the other) provide the other with evidence of its public liability insurance policy and any additions or restrictions thereto which may be made from time to time, and (if requested in writing) with sufficient evidence of the payment of premiums as they become due.
13. **Force Majeure**
  - 13.1 For the purposes of this Contract, a Force Majeure event means an event beyond the reasonable control of INFICON including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of INFICON or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm, default of suppliers or subcontractors, sabotage, non-culpable breakdowns, non-culpable malfunction of important work pieces, non-issue or late issue of official permits and all other unforeseen events.
  - 13.2 INFICON shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
14. **Other**
  - 14.1 Place of fulfillment shall be The United Kingdom. INFICON shall also be entitled to take legal action at the domicile of the customer's head office.
  - 14.2 Supplementary to all contractual provisions this agreement shall be governed by and construed in all respects in accordance with English law. For the avoidance of doubt, the United Nations Convention on the International Sale of Goods (CISG) shall not apply to this agreement. To contracts with relations to foreign countries the International and United Kingdom Conflict Rules shall also not apply. The international rules for the interpretation of trade terms prepared by the International Chamber of Commerce (Incoterms) shall apply but where they conflict with this agreement, this agreement shall prevail.
15. **Additional provisions in the case of repairs at an INFICON factory**
  - The following terms apply to repair work carried out at an INFICON factory. They have priority in regard to the above conditions in so far as they exclude, revise or amend them.
  - 15.1 The customer must deliver the object to be repaired at the customer's own expense and risk at the time arranged.
  - 15.2 The object to be repaired is to be delivered in a form of packaging that allows for easy and secure handling and that can be re-used for return transport. Risk and costs resulting from noncompliance with these instructions are borne by the customer.
  - 15.3 INFICON will exercise reasonable care and skill in ensuring the safe keeping of the object to be repaired. The risk of incidental worsening of the defect or of incidental destruction is borne by the customer.
  - 15.4 INFICON dispatches the repaired object at the expense and risk of the customer. In so far as the customer does not expressly indicate otherwise, INFICON insures the repaired object at the customer's expense against the usual transport risks including breakage.
  - 15.5 INFICON has the right to retain the repaired object until all financial demands linked with the business relationship, including subsidiary demands, have been met.
16. **Data Protection**
  - 16.1 We comply with the requirements of the Data Protection Act 1998 and the Electronic Communications Act 2000 and any statutory modification or re-enactment thereof. To this end any information provided to INFICON will be regarded as purely business information and as such does not come under the requirement of data protection.

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