

General terms of offer and sale (GTC)

1. General

1.1 These General Terms of Offer and Sale (hereinafter referred to as General Terms) are binding if they have been declared applicable in the offer (also called "quotation") or confirmation of order or as soon as an order is validly placed through the INFICON Webshop. Any other terms defined by the customer or in other documents are only valid if they have been expressly accepted by INFICON in writing or electronically. THESE GENERAL TERMS EXPRESSLY LIMIT ACCEPTANCE TO ITS TERMS AND CONSTITUTES NOTICE OF OBJECTION TO ANY ADDITIONAL OR DIFFERENT TERMS IN CUSTOMER'S DOCUMENTS SO AS TO PRECLUDE THE INCLUSION OF ANY DIFFERENT OR ADDITIONAL TERMS IN ANY RESULTING CONTRACT. IF THESE GENERAL TERMS ARE CONSTRUED AS AN ACCEPTANCE OR AS A CONFIRMATION OF AN EXISTING CONTRACT, SUCH ACCEPTANCE OR CONFIRMATION IS EXPRESSLY CONDITIONED ON THE CUSTOMER'S ASSENT TO ANY ADDITIONAL OR DIFFERENT TERMS CONTAINED HEREIN.

1.2 All quotations are valid for 30 days from date of quotation, unless INFICON states otherwise in writing.

1.3 Only the written or electronic confirmation of order is binding. If INFICON does not give a confirmation of order, the invoice shall serve as the confirmation of order.

1.4 If any one or more of the provisions of these General Terms or any part or parts thereof shall be declared or adjudged to be illegal, invalid or unenforceable under any applicable law, such illegality,

invalidity or unenforceability shall not vitiate the remainder of these General Terms and the illegal, invalid or unenforceable provision shall be replaced by a new provision the content of which shall be as close to the legal and economic effect of the replaced provision as possible.

2. Placing of order

2.1 To be effective, orders must be made in writing or electronically, by mail or in the INFICON Webshop.

2.2 The order must contain all information relevant to INFICON such as number and date of INFICON's offer, sales person etc.

2.3 If orders are placed in the INFICON Webshop the customer shall register on the internet page of INFICON and open a personal account. Orders may also be placed without opening a personal account; in this case, personal data is only used for the handling of the respective order. Irrespective of the manner of placing an order, the required information must be provided completely and accurately. Orders may only be placed by persons over the age of 18.

The password chosen upon registration in the INFICON Webshop must be kept secret at all times and may not be shared with third parties. Any and all transactions carried out on the INFICON Webshop with a pass word shall be solely the customer's responsibility, even if carried out without his knowledge.

In case products ordered online are returned to INFICON for reasons other than for breach of warranty, the delivery shall be made by the customer at his own cost and risk.

The customer may decline at any time to receive marketing and informational material from

INFICON by sending an e-mail or a letter to the INFICON Webmaster.

2.4 Compulsory legal rules possibly applicable to online business remain reserved.

3. Scope of supply and services

3.1 INFICON's scope of supply and services referred to in the confirmation of order shall form part of the contract only. Further goods and services not specified therein shall be charged extra.

3.2 INFICON is offering its products in the INFICON Webshop subject to availability. If a product is not available for supply, the customer is informed accordingly.

4. Technical documentation

4.1 Sales brochures and catalogs are not binding unless expressly stated otherwise. Specifications in technical documents are only binding as far as they have been expressly guaranteed.

4.2 INFICON reserves all rights to any technical documentation supplied to the customer. Without prior written consent of INFICON, such documentation shall neither in whole nor in part be disclosed to others or used for any purposes other than those for which they have been supplied to the customer. In particular, the customer is not entitled to reproduce or replicate components or parts thereof and services specified therein.

5. Confidentiality and Data Privacy

5.1 Each party shall keep confidential the manufacturing and business secrets as well as any other proprietary information received from the other party to the contract and shall neither directly nor indirectly disclose the same to any third party whomsoever, nor publish them in any manner whatsoever,

nor use them for any other purpose, in particular, but without limitation for the reproduction or replication of machines, systems, components and parts thereof.

- 5.2 All data relevant for the performance of a purchase shall be stored and relayed to the third party carrying out the delivery in the course of the online purchase. With the reservation of transfers to parties providing credit assessments, data shall not be transferred to any other third party. However, the data may be used for INFICON marketing purposes.
- 5.3 Communication of INFICON relating to any purchases may be made in electronic form. Thereby, the customer explicitly acknowledges the risks related with communication by e-mail and other security risks outside the control of INFICON, such as damage to or loss of data, computer viruses or interference of third parties. With the placing of an order, the customer agrees to the transmission of unencrypted documents, data and e-mails.
- 6. Norms and standards in force in the country of destination**
- 6.1 The goods are constructed in accordance with the European norms and standards (EC marking), unless otherwise provided for in writing.
- 6.2 At the latest, when placing the order the customer shall advise INFICON in writing of all other safety and operation standards in force in the country of destination. The customer shall bear the cost of any alteration or addition to the goods required to comply with standards or regulations, which have not been advised and agreed to by INFICON.
- 6.3 In case of resale or transfer of goods, the customer is obliged to take precautions that the goods meet the requirements, standards

and regulations to be observed at the new location and that all manuals and product related specific documents are updated accordingly for the operation of the then current product version.

7. Prices

- 7.1 Prices are net, EXW Balzers, Liechtenstein according to INCOTERMS 2010, exclusive of value added tax, sales tax and packing, unless expressly otherwise provided for in INFICON's offer.
- 7.2 Payment shall be made in freely available Swiss francs without any deductions whatsoever.
- 7.3 Any and all additional charges, such as, but not limited to, freight charges, insurance premiums, fees for export, transit, import and other permits, as well as for certifications, shall be borne by the customer. Likewise, the customer shall bear any and all taxes, fees, levies, customs duties and the like, which are levied out of or in connection with the contract, or shall refund them to INFICON against adequate evidence in the event that INFICON is liable for them.
- 7.4 The prices will be adjusted appropriately if:
- The term of delivery has been subsequently extended due to any reason for which the customer is responsible, or
 - The nature or the scope of the agreed supplies or services has changed, or
 - The material or the execution has undergone changes because the information and/or documents provided by the customer were not in conformity with the actual conditions or were incomplete.

8. Terms of payment

- 8.1 Payments have to be effected in accordance with the confirmation of order or invoice, as the case may be. Orders in the INFICON Webshop, however, shall be payable either by credit card in advance or through any other secure payment system as determined on the Webshop from time to time. Payment will be deemed to be made when the total price agreed on has been paid to INFICON in Swiss francs.
- 8.2 No interest will be reimbursed for advance payments.
- 8.3 Any dates agreed for payment shall remain in full effect even where through no fault of INFICON delays arise in the performance of the contract. The late delivery of minor components, the absence of which does not restrict the use of the goods or any further work within the scope of INFICON warranty obligations do not affect the time fixed for payment.
- 8.4 If INFICON does not receive payment by the date stipulated, interest shall thereafter accrue on the sum due and owing and shall be charged immediately to the customer at the current base lending rate in the customer's domicile in accordance with LIBOR plus 4% p.a., provided that such rate shall not be less than 1.5% per month.
- 8.5 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 inadmissible. The customer may only set off possible counterclaims against payments due under this contract where INFICON has expressly agreed to the same in writing.
- 9. Reservation of title**
- 9.1 INFICON shall remain the owner of all goods until having received

- the full payments in accordance with the contract.
- 9.2 The customer shall cooperate in any measures necessary for the protection of INFICON's title. In particular, upon entering into the contract it authorizes INFICON to enter or notify the reservation of title in the required form in public registers, books or similar records, all in accordance with relevant national laws, and to fulfill all corresponding formalities, at the customer's cost.
- 9.3 During the period of the reservation of title, the customer shall, at its own cost, maintain the goods and insure them for the benefit of INFICON against theft, breakdown, fire, water and other risks. It shall further take all measures to ensure that the INFICON title is in no way prejudiced.
- 10. Delivery and Delivery time**
- 10.1 Unless agreed differently in writing, delivery shall be made EXW Balzers (INCOTERMS 2010).
- 10.2 The time for delivery shall start as soon as the contract is entered into, the scope of supply and the specifications are defined, all relevant official formalities have been completed, payments due with the order have been made and any agreed securities have been given. The date of delivery shall be deemed to be observed if by that time INFICON has sent a notice to the customer informing that the goods are ready for dispatch.
- 10.3 INFICON's compliance with the time for delivery is conditional upon the customer fulfilling its contractual obligations.
- 10.4 The time for delivery will be extended correspondingly in case of contingencies beyond the reasonable control of INFICON. INFICON is not responsible for claims or damages resulting from these contingencies. As soon as
- the contingencies delaying the delivery no longer exist, the date of delivery will be fixed anew in writing.
- 10.5 Unless otherwise explicitly provided for in writing, agreed delivery dates are not binding. However, six weeks after failure to deliver by an agreed non-binding delivery date, the customer shall be entitled to request INFICON in writing to make delivery within a reasonable period. Failure to deliver within a reasonable period after the notice shall constitute late performance by INFICON.
- 10.6 Blanket orders may be scheduled over a 12 month or greater period. Unless otherwise stated, delivery of all goods must be taken within 12 months of order placement. An initial firm order release of 120 days is required, with a rolling 120 day firmly booked shipping schedule to follow by the first day of each calendar month. Delivery delays of more than 60 days require the customer to notify INFICON in writing of reason for the delay. INFICON may bill back the difference between the unit price billed during the last 12-month period and the quoted unit price of actual quantity delivered.
- 10.7 If this has been agreed expressly in writing, the customer is entitled to claim liquidated damages for delayed services in so far as it can be proved that the delay has been caused by the fault of INFICON and that the customer has suffered a loss caused by such delay.
- 10.8 In the case of delayed goods or services, the customer has no rights and claims other than those expressly stipulated in this clause 10; In particular, the customer has no right to rescind the contract. This limitation, however, does not apply to gross negligence or willful misconduct by INFICON.
- 11. Packing**
- 11.1 Packing shall be charged for separately by INFICON and shall not be returnable. However, if it is declared as INFICON property, it shall be returned by the customer, carriage paid to the place of dispatch.
- 12. Passing of benefit and risk**
- 12.1 Benefit and risk of the goods shall pass to the customer by the date of shipment EXW Balzers, Liechtenstein according to INCOTERMS 2010, at the latest.
- 12.2 If delivery is delayed at the request of the customer or otherwise due to no fault of INFICON, the risk shall pass to the customer at the date originally agreed for delivery EXW. From this date onwards, the goods shall be stored and insured at the customer's expense and risk and all payments shall become due at the agreed date of delivery.
- 13. Shipping, transport and insurance**
- 13.1 All goods will be shipped in export packing via lorries, airfreight or a combination thereof. INFICON must be notified for special requests in relation to forwarding, transport and insurance.
- 13.2 Transport shall be at the customer's expense and risk. Objections regarding forwarding or transport shall upon receipt of the goods or of the shipping documents be immediately submitted by the customer to the last carrier.
- 13.3 The customer shall be responsible for securing an insurance against risks of any kind.
- 13.4 Customer shall comply with all applicable domestic, foreign, import, export, security and environmental laws and regulations, including obtaining all necessary security clearances for airports, cargo transport areas, and related facilities, governmental approvals and licenses – without

- limitation in particular relating to dual use goods - in connection with the purchase of goods. In the case of the purchase of dual use goods, the customer warrants not to re-sell such products to any third party unless complying with any and all applicable legal provisions.
- 14. Inspection and acceptance of goods and services**
- 14.1 INFICON shall check the goods before dispatch and the services upon completion as far as usual. Any further controls requested by the customer have to be agreed upon separately and paid for by the customer.
- 14.2 The customer shall inspect the goods and services within a reasonable period and shall notify INFICON immediately of any defects in writing. If the customer fails to do so, the goods and services shall be deemed to have been accepted. Hidden defects shall be reported immediately after their discovery.
- 14.3 INFICON shall rectify defects notified in accordance with clause 14.2 as soon as possible and the customer shall give INFICON the ability to do so.
- 14.4 The customer has no other rights and claims with respect to any defects whatsoever in relation to goods or services except those expressly named in clause 14 and clause 15 (Warranty).
- 15. Warranty, Warranty period**
- 15.1 The period of warranty is 12 months and shall commence upon dispatch of the goods or works. If dispatch is delayed for reasons beyond INFICON control, the warranty period shall terminate no later than 18 months after INFICON has notified the customer that the goods are ready for dispatch. This warranty period is extended to 24 months in case the goods are acquired for private and personal consumption only.
- For replaced or repaired parts, the warranty period shall run for another period of 6 months after replacement or completion of the repair, but not longer than the expiry of a period being twice the warranty period pursuant to the preceding clause.
- The warranty under this contract expires prematurely with immediate effect if the customer or third parties make inappropriate modifications or repairs or if the customer, in case of a defect, does not immediately take appropriate steps to mitigate the damage and give INFICON the possibility to make good such defect.
- 15.2 INFICON warrants the technical specifications expressly specified in the confirmation of order or the specific technical specification mutually agreed upon in writing only as well as the material and workmanship of the delivered goods and undertakes to repair or replace at its option free of charge to the customer any defective parts during the warranty period at its earliest convenience, subject to the provisions of clause 14 which shall be applicable mutatis mutandis. Any parts replaced shall become property of INFICON.
- 15.3 Expressly excluded from the warranties and liability of INFICON for defects, are damages caused by normal wear, defective maintenance and handling by the customer, failure to observe the operating instructions, electrostatic effects, excessive voltage or current, excessive use, chemical or electrolytic influences, contamination, corrosion of cooling water systems of any kind, as well as any damages caused by arcing, electron beams, crucible breakage, etc., application of material, equipment and spare parts not recommended by INFICON, consumables, defective repairs which have not been carried out by INFICON or its agents, or resulting from other reasons beyond INFICON's control as well as in case of modifications made by the customer or improper system integration, construction, assembly and installation work not undertaken by INFICON, provided that the respective burden of proof is with the customer if a dispute regarding exclusion of warranty may arise.
- 15.4 INFICON warrants for the goods and services of subcontractors requested or provided by the customer to the extent of such subcontractor's warranty and liability obligations only.
- 15.5 The customer shall not be entitled to any warranty, express or implied, except those specifically set forth in clause 15.1 to 15.4 and INFICON shall have no liabilities for any other claims, including but not limited to, claims arising out of injury to or interference with the customer's production or any other consequential damages. This limitation, however, does not apply to gross negligence or willful misconduct of INFICON.
- 16. Exclusion of further liability**
- 16.1 INFICON makes no representation or warranty of any character with respect to infringement or to the exemption of the goods and services from third parties' protective rights.
- 16.2 INFICON ASSUMES NO RESPONSIBILITY FOR ANY WARRANTY, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE EXCEPT AS SPECIFICALLY PROVIDED IN THESE GENERAL TERMS. Without limiting the generality of the foregoing, this exclusion from liability includes, but is not limited to, claims, arising out of interference with the customer's production,

expenses for downtime, lost profits, lost sales, injury to person or property or any other incidental or consequential loss.

16.3 These exclusions, however, shall not apply to gross negligence or willful misconduct of INFICON.

16.4 Notwithstanding the foregoing, nothing herein shall limit INFICON's liability if, and only to the extent that, limitation or exclusion of such liability is prohibited by or contrary to the Product Liability Act or other applicable law, provided that the customer will indemnify INFICON for all non-contractual claims for product liability raised by third parties if the occurrence of the damages is not clearly imputable to INFICON.

17. No liability for additional obligations

17.1 INFICON is not liable for claims of the customer arising out of insufficient information or faulty advice and the like, or out of breach of any additional obligations whatsoever except where caused by INFICON's gross negligence or willful misconduct.

18. Applicable law and Place of Jurisdiction

18.1 These General Terms shall be construed and the legal relations between the parties shall be determined in accordance with the substantive law provisions of Switzerland, with the exclusion of the conflict of law's provisions of Switzerland. The uniform UN law of sales (CISG) shall not be applicable.

18.2 Any dispute arising in connection with these General Terms or any related contract shall be submitted to the courts of Liechtenstein, having jurisdiction over INFICON, provided that INFICON shall always be permitted to bring any action or proceedings against the customer in any court of competent jurisdiction.

18.3 In any action or arbitration brought under or in connection with these General Terms or any related contract, the prevailing party shall be entitled to recover its actual costs and attorneys' fees and all other litigation costs, including expert witness fees, and all actual attorneys' fees and costs incurred in connection with the enforcement of a judgment arising from any action or proceeding.