

Terms and Conditions of Sale

Buyer's order, described as per the INFICON Quotation hereof, is accepted upon and subject to Buyer's assent to the terms stated herein on subject Quotation and below, which Buyer agrees are a complete and exclusive statement of the agreement of Buyer and INFICON ("Seller"). Any additional or different terms are and will be objectionable to Seller and are rejected and not part of this contract unless specifically agreed to by an expressly authorized representative of Seller in writing.

1. **PRICES AND PAYMENTS:** All sales are f.o.b. Seller's plant and payments are due and payable net thirty (30) days after invoice date, subject to approval of Seller's credit department at the time of shipment. Pro rata payments are due and payable on partial shipments as made and invoiced. If shipments are delayed by Buyer or due to conditions beyond Seller's control, payment or pro rata payment, as the case may be, are due and payable on invoices issued on or after the date Seller is prepared to make shipment. If performance of work hereunder is delayed by Buyer, pro rata payments are due and payable on invoices issued when or at any time after the delay begins. Products held for Buyer shall be at Buyer's risk and expense.
2. **TAXES, DUTIES, AND PERMITS:** Seller's prices do not include any sale, use, excise, or similar taxes nor any export, import or other duties. The amount of any such taxes or charges applicable to the sale, use, exportation or importation of the product to be sold hereunder shall be paid separately by Buyer, or Buyer shall provide Seller a proper exemption certificate in respect thereof. All export and import permits required shall be furnished by Buyer.
3. **SHIPMENTS:** Shipping dates herein are approximate and are based upon estimated factory work schedules in effect. They are subject to timely receipt of all necessary materials and supplies from Seller's vendors, all necessary information and data from Buyer, priority scheduling requirements, and other contingencies beyond Seller's control. The time within which shipment shall be made hereunder shall include such additional time from the date herein specified as may be required by reason of non-availability or shortage of materials, supplies, labor, fuel, power or data, or by strike, flood, riot, fire, government regulation, explosion, war or other casualty or cause beyond Seller's control which cannot be overcome by due diligence or without unusual expense. Seller will use its best efforts within a reasonably practicable period of time after the occurrence of such condition to notify Buyer of the nature of the occurrence and the estimated length of additional time necessary to fill this order. **SELLER SHALL NOT IN ANY EVENT BE LIABLE IN DAMAGES, WHETHER CONSEQUENTIAL OR SPECIAL OR IDENTICAL OR OTHERWISE, FOR ANY DELAY IN SHIPMENT OR DELIVERY.**
4. **PACKING:** Unless a preferred packing method is provided for elsewhere in the order, all articles shall be packaged for shipment and storage in accordance with good commercial practices. Preferred packing charges shall be paid by Buyer.
5. **ACCEPTANCE:** The product shall be deemed accepted ten (10) days after receipt unless notice of rejection has been given in writing to Seller within the ten (10) day period.
6. **WARRANTY AND LIABILITY – LIMITATION:** Seller warrants the products manufactured by it, or by an affiliated company and sold by it, to be free from defects of materials or workmanship under normal proper use and service. The period of warranty coverage is specified in Seller's printed price list but shall not be less than one (1) year from the date of shipment by Seller. Items expendable in normal use, including but not limited to, crystals, filters, and filaments, are not covered by this warranty. Seller's liability under this warranty is limited to such of the above products or parts thereof as are returned, transportation prepaid, to Seller's plant, not later than thirty (30) days after the expiration of the period of warranty coverage in respect thereof and are found by Seller's examinations to have failed to function properly because of defective workmanship or materials and not because of improper installation or misuse and is limited to, at Seller's election, either (a) repairing and returning the product or part thereof, or (b) furnishing a replacement product or part thereof, transportation prepaid by Seller in either case. In the event Buyer discovers or learns that a product does not conform to warranty, Buyer shall immediately notify Seller in writing of such nonconformity, specifying in reasonable detail the nature of such nonconformity. If Seller is not provided with such written notification, Seller shall not be liable for any further damages which could have been avoided if Seller had been provided with immediate written notification.

THIS WARRANTY IS MADE AND ACCEPTED IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, WHETHER OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE, AS BUYER'S EXCLUSIVE REMEDY FOR ANY DEFECTS IN THE PRODUCTS TO BE SOLD HEREUNDER. All other obligations and liabilities of Seller, whether in contract or tort (including negligence) or otherwise, are expressly EXCLUDED. In no event shall Seller be liable for any costs, expenses or damages, whether direct or indirect, special, incidental, consequential, or other, on any claim of any defective product, in excess of the price paid by Buyer for the product plus return transportation charges prepaid.

No warranty is made by Seller of any Seller product which has been installed, used or operated contrary to Seller's written instruction manual or which has been subjected to misuse, negligence or accident or has been repaired or altered by anyone other than Seller or which has been used in a manner or for a purpose for which the Seller product was not designed nor against any defects due to plans or instructions supplied to Seller by or for Buyer.

7. **RETURNS:** All returns must be authorized by Seller. An R.M.A. (Returned Material Authorization) number issued by Seller must accompany all returned material. All items returned to Seller must be shipped transportation charges prepaid. Seller does not accept C.O.D. shipments. Buyer is obligated to notify Seller before returning any product of any exposure of product to dangerous or hazardous materials.
8. **CANCELLATION:** Should Buyer elect to cancel its orders, Buyer shall pay to Seller the Seller's standard restocking charge in effect from time plus refurbishment expenses, if any.
9. **REMEDIES:** If Buyer shall fail to make payments in accordance with the prices and terms specified herein, or be delinquent in any other payment owing to Seller, or if Buyer's financial condition at any time does not, in Seller's judgment, justify continuance of work or shipments on the original terms of payment specified herein, Seller may, in addition to all other remedies, require payment in advance for any further work or shipments hereunder or may terminate this contract. In the event of bankruptcy or insolvency of Buyer or any proceedings brought by or against Buyer under the Bankruptcy or insolvency laws. Seller at its option may cancel any order then outstanding from Buyer.
10. **PATENTS:** The buyer shall hold the Seller harmless against any expense or loss resulting from infringement of patents or trademarks from compliance with Buyer's designs or specifications or instructions.
Except as otherwise provided in the preceding sentence, the Seller shall defend any suit or proceeding brought against the Buyer so far as based on claim that any product, or any part thereof, furnished under this contract constitutes an infringement of any patent of the United States, issued on or before the date of shipment, if notified promptly in writing and given authority, information and assistance (at the Seller's expense) for the defense of same, and the Seller shall pay all damages and costs awarded therein against Buyer. In case said product, or any part thereof, is in such suit held to constitute infringement and the use of said product or part is enjoined, or Seller shall reasonably conclude that the products are infringing, the Seller shall, at its own expense, either: procure for the buyer the right to continue using said product or part, or replace same with non-infringing products; or modify it so it becomes non-infringing; or remove said product and refund the purchase price and the transportation and installation costs thereof. The foregoing states the entire liability of the Seller for patent infringement by said products or any part thereof.
11. **GENERAL:** All applicable requirements of the Fair Labor Standards Act of 1938 and the Walsh-Healey Act, as amended, will be observed by Seller. Orders may not be assigned without written consent of Seller. The written instruments between the parties constitute their entire agreement and no waiver, alteration or modification of any provision thereof shall be binding unless in writing and signed by an authorized representative of Seller. If any portion or clause of this agreement is held invalid or unenforceable as to any person or under circumstances, the invalidity or lack of application shall not impair or affect the other provisions and the application of those provisions which can be given effect without the invalid or unenforceable provision or application. With this intention, the provisions of this agreement are declared to be severable.

SELLER DISCLAIMS ANY AND ALL LIABILITY, WHETHER DIRECTLY OR BY THE WAY OF INDEMNITY, FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES, WHETHER BASED ON BREACH OF CONTRACT, TORT, STRICT OR PRODUCTS LIABILITY, PATENT OR TRADEMARK INFRINGEMENT, OR ANY OTHER LEGAL THEORY IN CONNECTION WITH THE PURCHASER OR USE OF THE PRODUCTS.

12. **EXPORT AND REEXPORT:** Buyer acknowledges that the equipment supplied herewith may be subject to U.S. Department of Commerce, Office of Export Administration Rules and Regulations. If equipment is intended for export or reexport, the Buyer agrees to comply with all U.S. Government Rules and Regulations pertaining to export or reexport of said equipment.
13. **ARBITRATION:** Any controversy or claim arising out of or relating to the terms and conditions of the Contract, or the negotiation or breach thereof, shall be settled by arbitration before a panel of three (3) arbitrators (of whom the chairman shall be a licensed attorney) in New York, New York, in accordance with the Commercial Arbitration Rules of the American Arbitration Association, including also the Association's Supplementary Procedures for International Commercial Arbitration, and judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof.
14. **APPLICABLE LAW:** This contract for and any sale hereunder shall be governed by the laws of the State of New York.

INFICON Inc.

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