

1. General Provisions

1.1 All supplies and services of INFICON Ltd (INFICON) are subject to these terms and conditions.
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 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. Offer / Acknowledgment of Order

2.1 Quotes from INFICON are not offers and are not binding.
2.2 An offer is made by the Buyer to INFICON by way of Purchase Order. The offer is accepted when the Purchase Order 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. Prices, Packing, Insurance

3.1 The prices are quoted according to INCOTERMS 2010 including packing but excluding erection and start-up.
3.2 The sales price does not include any sales, excise, turnover or freight transportation tax etc. nor any export, import or other duties to be additionally charged by INFICON, as the case may be, in accordance with official regulations at the time of fulfillment of the contract.
3.3 Unless the Buyer expressly determines otherwise, INFICON shall insure the ordered goods against the usual transport risks including breakage and charge the cost incurred to the Buyer.

4. Delivery Date

4.1 Subject to clause 4.2 below, delivery is complete upon the goods arriving at the address specified for delivery by the Buyer on the Purchase Order.
4.2 Where payment is agreed to be made in advance of dispatch, goods will only be made ready for dispatch when INFICON have received payment in full and clear funds.
4.3 Partial deliveries are permitted to a reasonable extent. Minor defects do not affect buyer's obligation to take delivery of the goods.
4.4 If delivery is delayed by a force majeure event as defined in clause 9 below, the delivery period shall be reasonably extended, at the latest by six months.

5. Terms of Payment

5.1 Payments shall be made in full and clear funds within 30 days from the date of invoice, unless otherwise agreed in INFICON's acknowledgment of order. In case of partial shipments INFICON shall be entitled to issue invoices in part accordingly.
5.2 Payments are to be made to the payments office of INFICON as set out on the Invoice. Fees, expenses or sundries incurred by INFICON by accepting bills or cheques upon specific agreement between INFICON and buyer shall be at buyer's expense.
5.3 The retention of, or deduction from payments due to complaints, disputes or claims on the part of the buyer which have not been agreed in writing by INFICON is prohibited. The buyer may only set off possible counterclaims against payments due under this contract where INFICON has expressly agreed to the same in writing.

6. Risk and Title

6.1 Where explicitly agreed risk shall pass to the buyer pursuant to the INCOTERMS 2010. In the absence of such agreement the risk shall pass to buyer on completion of delivery pursuant to 4.1 above. This shall also apply to partial shipments or where INFICON has undertaken to assume supplemental services and payments, such as the cost of dispatch, carriage and erection.
6.2 If dispatch is delayed due to reasons attributable to the buyer, risk shall pass to buyer upon notice of readiness for dispatch.
6.3 Title to the goods shall not pass to the buyer until INFICON receives payment in full, cleared funds for the goods and any other goods that INFICON has supplied to the buyer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums.
6.4 If the buyer defaults in payment, INFICON may require the buyer to deliver up all goods in its possession which have not been resold, or irrevocably incorporated into another product; and if the Customer fails to do so promptly, INFICON may enter any premises of the buyer or of any third party where the goods are stored in order to recover them.
6.5 Where special regulations or any other provisions are applicable in the country of buyer or of destination of the goods in respect of the validity of the reservation of property rights, buyer himself shall undertake to carry out the terms of such regulations or provisions to safeguard INFICON's rights.
6.6 Buyer is permitted to dispose of delivery items in the ordinary course of business. Any claims arising

after risk has passed but before title passes and resulting from any unauthorized dispositions are assigned to INFICON. The buyer must inform INFICON of any such claim immediately.

6.7 In the event that the goods supplied are used for, connected, mixed or mingled with another equipment not owned by INFICON prior to title passing to the buyer, INFICON shall be entitled to a co-ownership in the new equipment pro rata the value of the goods supplied to the remaining equipment which existed before the date of working, processing, connecting, mixing or mingling. The buyer shall hold the equipment in trust for INFICON.
The provisions in this Clause 6 shall equally apply to the co-ownership share.

6.8 Restrictions or any other such measures imposed by third parties must be reported by buyer without delay to INFICON.

6.9 Until title to the Goods has passed to the buyer, the buyer shall maintain the Goods in satisfactory condition and keep them insured against all risks and damages, such as robbery, breakage, fire and water, for their full price from the date of delivery; The buyer shall, upon request, furnish proof thereof to INFICON. In case that buyer fails to furnish such proof requested within a reasonable period of time, INFICON shall be entitled to take out such insurance at buyer's expense.

7. Warranties

7.1 INFICON undertakes at its discretion to repair or to replace any goods supplied or parts thereof resulting defective prior to the passing of risk (e.g. owing to faulty design, defect in material or workmanship, failure to reach the performance figures quoted).

7.2 In case of failure of repair or replacement and subject to clause 7.3, the buyer shall be entitled to claim a reduction to costs or to terminate the contract.

7.3 For clause 7.2 to take effect, notice of defects must be given within three weeks from the date of delivery save for where defects are not perceptible on inspection of the goods supplied in which case the INFICON must be notified of the defect immediately after detection. Notice must specify the nature of the defects or faults and whether they have been discovered at once or only after subsequent treatment or processing of the supplied goods or parts. INFICON shall be entitled to have the defectiveness checked by its own staff. **Compliance with INFICON's maintenance and service instructions will also be required and checked.**

7.4 The buyer shall grant to INFICON reasonable time and opportunity to carry out any necessary repairs or replacements at the discretion of INFICON. If the buyer fails to do so, INFICON shall be relieved of any warranty or liability. Only in an emergency, and where INFICON are notified of the emergency, the buyer shall be entitled to remedy the defect himself or to have it remedied by a third party and to recover costs necessarily incurred from INFICON. 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.

7.5 INFICON shall bear the direct costs arising from repair or replacement for warranty claims provided they have proven justified and defect has been correctly notified in due course. Such direct costs are limited to the cost of the replaced part, including carriage, and reasonable costs for installation and personnel. All further costs shall be borne by buyer.

7.6 The limitation period for warranty claims on goods supplied amounts to 24 months from the date of delivery. Warranty claims will only be accepted if the required maintenance and care procedures have been properly carried out and documented.

7.7 Warranty claims in respect of parts replaced and repairs shall expire after three months, but not before the warranty period for the goods originally supplied.

8. Intellectual Property/Data/Documents

8.1 Unless otherwise indicated by INFICON, the goods supplied are, to the best of INFICON knowledge, free from any third party rights. Should the goods supplied hereunder or part thereof, at the moment of conclusion of contract, infringe a third party patent or patented process already granted and INFICON shall at its discretion and within a reasonable time obtain for buyer the right to continue to use the goods or part thereof or to modify or replace them with non-infringing goods or process or to withdraw from the contract. INFICON assumes no additional liability, e.g. for processes, applications, products etc.

8.2 The buyer indemnifies INFICON against the infringement of any third-party patents by a design or specification caused by buyer.

8.3 Data contained in catalogues, brochures and folders, as well as general information in data sheets and drawings accompanying quotations are approximate and are not binding unless expressly stated as such.

8.4 INFICON reserves the right to alter the design and, where there is a shortage of raw material, to use other materials unless opposed by overriding concerns of the buyer known to INFICON.

8.5 INFICON reserves the right of ownership and copyright of all sales references and other documents made available to the customer; they must not be used for any other purpose, copied, reproduced or made

available to a third party; they do not confer title or imply the grant of any license for reproduction of INFICON products or parts.

9. Force Majeure

9.1 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 operating breakdowns, important tools or work pieces becoming useless through no fault of INFICON, non-or delayed issuance of official authorizations and all other unforeseen events.

9.2 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.

9.3 If the Force Majeure Event prevents INFICON from fulfilling the contract for more than six months, INFICON shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

10. Liability/Termination

10.1 To the extent permitted by law each Party's maximum liability in respect of all causes of action arising under or in connection with these terms and conditions (whether for breach of contract, negligence or any other tort, under statute or statutory duty or otherwise at all) shall not exceed 5% of the order value.

10.2 The liability of either Party to the other for any breach of this Agreement, any negligence or arising in any other way out of the subject matter of this Agreement, will not extend to any indirect damages, loss of profit or other consequential damage unless based on liability for deliberate action, gross negligence or breach of material contract provisions.

10.3 Nothing in these Conditions shall limit or exclude either parties 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).

10.4 Nothing in this contract affects the buyer's statutory right to cancellation in case of delay and frustration.

11. Jurisdiction

11.1 Place of fulfillment shall be The United Kingdom. INFICON shall also be entitled to sue buyer before the Court having jurisdiction over buyer's place of business.

11.2 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.

12. Data Protection

12.1 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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