

TERMS AND CONDITIONS

(1) OFFER AND ACCEPTANCE: This Acknowledgement/Offer to Sell is not an acceptance of the terms and conditions of any offer or order of Purchaser and any such offer or order is expressly rejected. This Acknowledgement/Offer to Sell is an offer by ProMinent Fluid Controls Ltd. ("Seller") to Purchaser and acceptance of the offer contained herein is expressly limited to its terms. Upon acceptance by Purchaser this Acknowledgement/Offer to Sell shall be the final written expression of agreement between Seller and Purchaser, constituting the entire contract between them and superseding all previous communications, either verbal or written. This Acknowledgment/Offer to Sell and the contract resulting from it ("the Contract") may be modified only in writing signed by an authorized officer of Seller. Reference herein to any order or other communication of Purchaser is only for the purpose of identification.

(2) WARRANTY REMEDY DISCLAIMER: The warranties set out in this clause shall be conditional upon fulfillment of the Purchaser's contractual obligations, including all terms of payment. Seller warrants that pump drive units and Dulcometer Controllers will be of good workmanship and material for two (2) years from date of shipment by Seller. For sales of liquid ends, Bellozon, Bonozon, pump accessories, standard engineered products, custom design items, Seller offers one (1) year warranty from date of shipment by Seller. Sensors, Membrane Caps, Buffer Solutions and other consumables are not covered by any warranty. For all items supplied by but not manufactured by Seller, warranty will be as supplied by others. If Purchaser claims that goods are defective, they must permit Seller's Personnel to inspect goods on Purchaser's property, if Seller deems necessary. Purchaser shall not return goods to Seller without prior written approval of such by Seller. All goods must be returned "PREPAID". After inspection and if claim is valid, replacement or repaired goods will be returned to Purchaser "PREPAID" via Seller's choice of expediting. THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED AND STATUTORY AND IS STRICTLY LIMITED TO ITS TERMS. SELLER MAKES NO WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR ANY PARTICULAR PURPOSE. The warranties set out in this clause shall be conditional upon the fulfillment of the purchasers contractual obligations, including all terms of payment. The warranty provided for herein shall not apply to any goods that become defective for the following reason: (a) unsuitable or unreasonable use; (b) faulty assembly, installation or servicing by the Purchaser or any third party; (c) faulty or careless handling.

(3) DISCLAIMER OF TORT LIABILITY: PURCHASER SPECIFICALLY UNDERSTANDS AND AGREES THAT SELLER SHALL NOT BE LIABLE IN TORT, WHETHER BASED ON NEGLIGENCE, STRICT LIABILITY OR ANY OTHER THEORY OF TORT LIABILITY, FOR ANY ACTION OR FAILURE TO ACT IN RESPECT TO THE MANUFACTURE, PREPARATION FOR SALE OR DELIVERY OF THE GOODS. IT IS THE PARTIES' INTENT AND THE INTENT OF THIS PARAGRAPH TO ABSOLVE AND PROTECT SELLER FROM ANY AND ALL TORT LIABILITY.

(4) EXCLUSIVE REMEDY: PURCHASER SPECIFICALLY UNDERSTANDS AND AGREES THAT PURCHASER'S SOLE AND EXCLUSIVE REMEDY FOR BREACH OF WARRANTY, TORTIOUS CONDUCT OR ANY OTHER CAUSE OF ACTION AGAINST SELLER SHALL BE THE REMEDY PROVIDED IN PARAGRAPH 2, ABOVE.

(5) EXCLUSION OF CONSEQUENTIAL DAMAGES: PURCHASER SPECIFICALLY UNDERSTANDS AND AGREES THAT UNDER NO CIRCUMSTANCES WILL SELLER BE LIABLE TO PURCHASER FOR ECONOMIC SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OR LOSSES OF ANY KIND WHATSOEVER, INCLUDING BUT NOT LIMITED TO, LOSS OF ANTICIPATED PROFITS AND ANY OTHER LOSS CAUSED BY REASON OF THE NON-OPERATION OF THE GOODS THIS EXCLUSION IS APPLICABLE TO CLAIMS FOR BREACH OF WARRANTY, TORTIOUS CONDUCT OR ANY OTHER CAUSE OF ACTION AGAINST SELLER.

(6) PRICES: The price of the goods, as quoted above is subject to change without notice. The actual sales price shall be Seller's price in effect at the date Seller receives notification of Purchaser's acceptance of the offer contained herein. Purchaser shall pay, in addition to the actual sales price, all excise, privilege, occupational sales use, personal property and other taxes, and in the event that same are paid by Seller, Purchaser will reimburse Seller for the cost thereof, forthwith upon demand. Terms of payment are cash on delivery unless otherwise provided herein. Invoices unpaid after 30 days are subject to a 1.5 % per month finance service charge. All prices are F.O.B. Guelph, Ontario, and subject to change without prior notice.

Shipments will be insured only upon request by customer. ProMinent will not accept goods for return without an Authorization Number or if received collect. PLEASE NOTE: The following products are non returnable for credit; probes, Extrinsic Pumps, Makro HK & HMM Pumps, Chlorine Dioxide Generators, and Ozone Generators (This policy does not pertain to

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faulty equipment). A restocking charge may apply to all returned goods. Minimum billing of \$25.00 applies to all orders placed.

(7) **RISK OF LOSS:** Purchaser assumes and shall bear the entire risk of loss of or damage to the goods sold hereunder from any cause whatsoever from the time it is delivered F.O.B. Seller's facility and no such loss or damage to the goods or any part thereof shall relieve the Purchaser from its obligations hereunder.

(8) **CANCELLATION:**

a) The Contract is not subject to cancellation by Purchaser unless Purchaser obtains written approval of such from Seller. If the Contract is cancelled, Purchaser shall pay all reasonable charges, as invoiced by Seller, for expenses incurred by Seller prior to cancellation.
b) All unreleased orders must be shipped and invoiced within six (6) months of initial placement or said orders will be cancelled and appropriate charges applied. Please note that "ON HOLD" orders are subject to all published price increases.

(9) **SHIPMENT, FORCE MAJEURE:** Time of shipment shall be subject to "Force Majeure" which term is hereby declared to include all circumstances and actions whatsoever beyond the direct and immediate control of Seller among which, but not exclusive of others, are the following: Acts of God, war and riot, intervention of authorities or agencies of government including but not limited to agencies concerned with the preservation of the environment, embargoes, vandalism, sabotage, strikes, lockouts, or other industrial disturbances; shortages or delay in supply of fuel, power, raw materials or component parts; and the unavailability of means of transportation. Seller shall not be liable for any loss or damage caused to Purchaser nor shall Purchaser be entitled to cancel the Contract because the time of shipment is not met due to Force Majeure. Upon the happening of an event of Force Majeure as set out above, the Seller, at its sole option, may terminate this contract in whole or in part. The Seller shall also have the right of rescission in the event that it becomes known to the Seller that the Purchaser's financial condition is such that the Purchaser does not reasonably appear to have the ability to pay the Seller for the goods ordered herein. In the event that the Seller intends to exercise its right of rescission upon the happening of the events noted above, the Seller shall immediately give the Purchaser written notice of the exercise of its right of rescission. The Purchaser shall not be entitled to any claim for damages as a result of the Seller's exercise of its right of rescission.

(10) **SECURITY INTEREST:** In consideration of the Seller agreeing to sell the goods to the purchaser and in order to secure payment of the purchase price, the Purchaser hereby grants to the Seller, and the Seller hereby reserves, a security interest and a purchase money security interest in the goods and all substitutions, replacements and additions thereto and the proceeds thereof. The goods set out on the reverse side hereof shall remain personal property and shall not become part of the freehold of Purchaser.

(11) **DEFAULT:** If the Purchaser defaults in any payment of compliance with the terms hereof, or if a proceeding in bankruptcy, receivership or insolvency, be instituted against the Purchaser or its property, or the Seller deems the goods provided for hereunder in danger of misuse or confiscation, the Seller may retain any partial payments which have been made hereunder as liquidated damages and not as a penalty, and the Seller shall have the right, at its election, to declare the unpaid balance, together with any other amount for which the Purchaser shall have become obligated hereunder to be immediately due and payable, and the Seller or any office or duly authorized representative of the Seller may take immediate possession of the goods. The Seller may, to the extent permitted by law, resell the goods at public or private sale at any location, without demand for performance, with or without notice of advertisement, with or without such property at the place of sale, and upon such terms as the Seller may expressly bid at any such public sale for such goods.

(12) **APPLICABLE LAW:** This agreement shall be governed by the laws of the Province of Ontario and the law of Canada applicable therein, and the parties hereto do hereby irrevocably attorn to the jurisdiction of the courts of the Province of Ontario.

(13) **CHOICE OF LANGUAGE:** The parties hereto have requested and agreed that this agreement be drawn up in the English language. Les parties aux presentes ont demandee et convenu que le present contract soit redige en Anglais.

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