

Microfluidics International Corporation

M-5

Standard Terms and Conditions

The following Microfluidics M-5 Standard Terms and Conditions ("M-5" and/or "Agreement" respectively) apply to all makes and models of Microfluidizer® Equipment ("Equipment"), parts for such Equipment ("Parts") and purchase of additional repair services or refurbishment ("Maintenance") described in the invoice, lease, proposal, quote, purchase order, purchase order acknowledgment, sales acknowledgement or other instrument to which the M-5 is attached or to which reference is made.

1. **Definitions.** "Seller" means "Microfluidics International Corporation". "Buyer" means, as applicable, the purchaser or lessee of the Equipment, Parts or Maintenance. "Start-Up" shall mean shipment of the Equipment at Buyer's premises or Buyer's third party location prior to the Equipment being placed into service.
2. **Terms of Sale.** The Equipment or Parts is transferred by Seller to the shipping carrier FCA or ExWorks Seller's Warehouse Waterloo, Ontario Canada ("Seller's Warehouse") (Incoterms 2010) at which point title and all risk of loss or damage to Equipment and Parts will pass to Buyer.
 - a. Each shipment is a separate sale and is subject to credit arrangements or to receipt of cash. If payment is not made in accordance with Seller's payment terms, or if at any time in Seller's sole judgment Buyer's credit standing has been impaired, Seller may withhold shipment of any Equipment or Parts, until cash or credit arrangements have been established to Seller's sole satisfaction.
 - b. Seller reserves the sole and exclusive right at any time to allocate its resources and production capacity among any or all purchasers as Seller deems fair and practical without liability for any failure to deliver.
 - c. Seller is not bound by any terms, provisions, or conditions relating to the sale or lease of Equipment, Parts or Maintenance to Buyer other than those expressly provided for in Seller's invoice, written quote, purchase order acknowledgment or lease, unless expressly agreed by Seller in writing. In the event that the provisions of Buyer's purchase order are inconsistent or conflict with the provisions of the M-5 or of Seller's invoice, proposal, lease, or purchase order acknowledgment, the provisions of the M-5 or Seller's invoice, quote, lease or purchase order acknowledgment shall prevail.
3. **Product Warranty.** All technical support installation, product warranty, and post warranty services are provided only at the original installed location. Product Warranty is NONTRANSFERABLE from one location to another except with the prior written consent of Seller.
 - a. Seller warrants that at the time of shipment to the Buyer's premises new Equipment and new Parts will be free from defects in materials and workmanship and Maintenance will be performed in a workman like manner. Except as set forth below, Seller warrants that for a period of one (1) year following shipment of new Equipment, six (6) months from shipment of new Parts, and six (6) months from the date of Maintenance Seller will, at its option, replace, repair or otherwise correct any bona fide defect in material or workmanship which existed in new Equipment, new Parts or Maintenance at the time of shipment or performance, respectively, provided that Buyer notifies Seller of such defect in writing within ten (10) days after Buyer knows or has reason to know thereof, and provided further that inspection of the Equipment or Parts by Seller discloses that the defect developed under normal and proper use of the Equipment. The following wear parts are not warranted for the period stated above but only for a period of ninety (90) days from the date of shipment: process piping, interaction or reaction chambers, auxiliary processing modules, elastomeric seals, transducers, back-up rings, o-rings, and gaskets. All duties, brokerage charges, taxes, freight, insurance and labor shall be the sole liability and responsibility of Buyer. This warranty will not apply to damage or accident to Equipment and Parts or any part or component thereof occurring during or after shipment or to any Equipment and Parts or part or component thereof that is used for an application or to process a material other than the particular application and material for which it is designed and intended, is changed or modified (unless the change or modification is made by or in accordance with written instructions of Seller), is misused, abused or neglected, deteriorates due to erosion, abrasions or chemical action, fails due to issues with the material being processed, fails after expiration of the warranty period, fails due to improper installation (except for installation provided or supervised by

Seller), operation or maintenance, or fails due to failure or substandard performance of any non-Seller equipment, part, product or system with which Seller Equipment or Parts are used, installed or incorporated.

- b. Seller warrants that new Equipment and new Parts comply with specifications described in Seller's web site, literature and marketing collateral at the time of purchase order. The Equipment, Parts and Maintenance are always subject to specific provisions in the Seller's written quote to Buyer. Seller will not be bound by any specifications to which Seller has not agreed to in writing.
- c. If, after reasonable effort and at its sole and exclusive discretion, Seller is unable to replace, repair or otherwise correct defects under this warranty in order to facilitate Equipment or Parts operation in accordance with the contracted specifications, Seller may at its sole discretion, elect to accept the return of the Equipment or Parts, in which case Seller will refund to Buyer the purchase price or rental fees, or portion of such fees, paid by Buyer as may be reasonable after taking into account prior use of the Equipment or Parts, if any, while it was in the Buyer's possession. Equipment or Parts will not be returned to Seller without Seller's written permission. Provision of a replacement part or component will not operate to extend the warranty period for any Equipment or Parts. Seller reserves the right to inspect Equipment or Parts and parts and components thereof that are subject to warranty claims and to require the return of Equipment or Parts and parts and components thereof that are subject to warranty claims to Seller's Warehouse at Buyer's expense; provided, however, that if it is determined that the issue with returned Equipment or Parts or a returned part or component is covered by warranty, Seller's will reimburse Buyer for freight charges associated with the return of such Equipment or Parts, part or component to Seller's Warehouse. Seller also reserves the right to use reconditioned parts and components for warranty replacements.
- d. This Warranty only applies to new Equipment and new Parts and does not apply to used, or pre-owned ("Used") Equipment and Parts. **ALL USED EQUIPMENT AND USED PARTS ARE SOLD "AS IS" WITHOUT ANY WARRANTY OR INDEMNIFICATION. BUYER ASSUMES ALL RISKS AND LIABILITIES FOR USED EQUIPMENT AND USED PARTS.**

4. **Limitation of Liability.** SELLER MAKES NO EXPRESS WARRANTIES OTHER THAN AS SET FORTH IN SECTION 3.A AND 3.B NOR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE ARISING UNDER THE UNIFORM COMMERCIAL CODE OF ANY STATE OR OTHERWISE IMPLIED BY LAW, ALL OF WHICH ARE EXPRESSLY EXCLUDED.

SELLER MAKES NO WARRANTY CONCERNING PARTS, COMPONENTS OR ACCESSORIES NOT SUPPLIED BY SELLER.

SELLER IS RELEASED FROM ALL OBLIGATIONS UNDER THIS PRODUCT WARRANTY IN THE EVENT THAT EQUIPMENT OR PARTS REPAIRS OR MODIFICATIONS ARE MADE BY PERSONS OTHER THAN SELLER'S AUTHORIZED SERVICE PERSONNEL. EXCEPT AS STATED ABOVE, SELLER MAKES NO WARRANTY, EXPRESS OR IMPLIED (EITHER IN FACT OR BY OPERATION OF LAW), STATUTORY OR OTHERWISE; AND EXCEPT TO THE EXTENT STATED ABOVE, SELLER SHALL HAVE NO LIABILITY UNDER ANY WARRANTY, EXPRESS OR IMPLIED (EITHER IN FACT OR BY OPERATION OF LAW), STATUTORY OR OTHERWISE.

SELLER WILL NOT BE LIABLE TO BUYER, BUYER'S CUSTOMERS, BUYER'S EMPLOYEES, BUYER'S AFFILIATES, USERS OF BUYER'S PRODUCT, OR TO ANY THIRD PARTY, FOR SPECIAL, PUNITIVE, INDIRECT OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING BUT NOT LIMITED TO LOST PROFITS, AND FROM ANY CLAIM, ACTION OR CAUSE WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE MANUFACTURE, SALE, RECALL, HANDLING, REPAIR, REPLACEMENT OR USE OF BUYER'S PRODUCTS. BUYER AGREES TO INDEMNIFY AND HOLD HARMLESS SELLER, ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS AND AFFILIATES FROM ANY CAUSE, ACTION OR CLAIM ARISING OUT OF OR RELATED TO THE MANUFACTURE, SALE, RECALL, HANDLING, REPAIR, REPLACEMENT OR USE OF BUYER'S PRODUCTS.

SELLER WILL NOT BE LIABLE TO BUYER, BUYER'S CUSTOMERS, BUYER'S EMPLOYEES, BUYER'S AFFILIATES, USERS OF BUYER'S PRODUCT, OR TO ANY THIRD PARTY, FOR REPRESENTATIONS AND WARRANTIES MADE BY SELLER'S DISTRIBUTORS AND SALES

AGENTS WHICH ARE INCONSISTENT OR IN CONFLICT WITH THE TERMS OF THE M-5 (INCLUDING BUT NOT LIMITED TO THE PRODUCT WARRANTY AND THE LIMITATION OF THE LIABILITY OF SELLER AS SET FORTH ABOVE).

IN NO EVENT WILL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT OR TORT OR ANY OTHER THEORY OF LIABILITY, EXCEED THE PURCHASE PRICE OF THE EQUIPMENT, PARTS OR MAINTENANCE, EVEN IF SELLER IS ADVISED OR PLACED ON NOTICE OF THE POSSIBILITY OF SUCH PENALTIES OR DAMAGES AND NOTWITHSTANDING THE FAILURE OF ANY ESSENTIAL PURPOSE OF ANY EQUIPMENT OR PARTS.

In no event shall Seller be liable for any late delivery or other penalties. Seller's obligations and Buyer's remedies for a breach of Product Warranty is limited to those set forth herein. No suit or action against Seller for breach of Product Warranty may be commenced by Buyer more than one (1) year following the breach of the Product Warranty. Nothing herein expands the Seller's obligations or the Buyer's remedies for breach of Product Warranty beyond the provisions set forth above.

Buyer will use and operate the Equipment and Parts in a careful manner and only in accordance with written operating instructions furnished by Seller and good operations practices. Seller shall have no liability to Buyer for breach of warranty or otherwise if Buyer operates the Equipment and Parts in any manner other than in accordance with Seller's written operating instructions. If Buyer claims that Seller has failed to furnish such instructions, it is Buyer's responsibility to obtain the same from Seller before commencing use or operation of the Equipment or Parts.

5. **Intellectual Property.** All patents and other intellectual property rights in relation to Equipment supplied by Seller are and shall remain the sole and exclusive property of Seller. Buyer by purchasing the Equipment acknowledges and agrees that the Equipment embodies and/or utilizes Seller's valuable intellectual property, know-how and trade secrets, including, without limitation, confidential, proprietary information associated with the design, operation and use of the interaction or reaction chamber associated with such Equipment (collectively, the "Trade Secret Information"). Buyer hereby agrees, represents and warrants that it will not, nor will it aid, assist or permit any other person to: (i) tamper with the Equipment, including specifically the interaction or reaction chamber thereof, (ii) utilize any imaging equipment or other modality to reveal the inner structures and/or designs of the Equipment, including specifically the interaction or reaction chamber thereof, (iii) attempt to disassemble or reverse engineer the Equipment, including specifically the interaction or reaction chamber thereof, or any interaction or reaction chambers purchased, rented or used by it, or (iv) otherwise discover and/or utilize any of the Trade Secret Information. Buyer further agrees, represents and warrants that it will not disclose, nor will it aid, assist or permit any other person to disclose, any information which it may learn or discover about the materials and methods of construction, design, assembly, functioning, geometries, measurements and tolerances of the internal components of the Equipment, including specifically the interaction or reaction chamber(s). Buyer furthermore agrees that Buyer shall be liable to Seller, for any and all actual and potential, direct and indirect, incidental and consequential damages, including, without limitation, lost profits, arising from or related to any violation of these provisions, as well as any and all equitable relief as a court may impose, to remedy any such violation.

Buyer agrees and binds itself to make no claim to any right, title or interest either by means of patent application, trademark, trade secret or other proprietary right with regard to results derived from, or based upon, the specific process furnished by Seller's equipment. Notwithstanding the above, all patent and other intellectual property rights in Buyer's Product, created by or for Buyer shall remain the exclusive property of Buyer. For clarity, this allows inclusion of a description or reference to Seller's equipment and/or non-confidential aspects of Seller's Microfluidizer technology or processes where necessary to support a claim to a Buyer's Product, but does not allow a claim to Seller's equipment and/or Seller's Microfluidizer technology or processes or a reference to confidential aspects of Seller's Microfluidizer technology or processes. Nothing in this Agreement shall be construed as granting to Buyer any license or grant of intellectual property rights with regards to the machine's process.

6. **Seller Indemnity.** Seller shall defend, indemnify and hold harmless Buyer against (a) claims that Equipment in the form supplied by Seller infringes any United States issued patent; provided, however, that Seller shall have no obligation to defend, indemnify and hold harmless Buyer against a patent infringement claim to the extent such claim is based upon or arises out of the use of Equipment for an application or to process a material

other than the particular application and material for which it is designed and intended, a change or modification to Equipment (unless the change or modification is made by or in accordance with written instructions of Seller), the material being processed with Equipment, any non-Seller Equipment, product or system with which Seller Equipment is used, installed or incorporated, or the use of any intellectual property of Buyer or any of its affiliates, and (b) claims for personal injury to the extent to such personal injury is caused by or results from defects in design, material or workmanship of Equipment in the form supplied by Seller; provided, however, that Seller shall have no obligation to defend, indemnify and hold harmless Buyer against a personal injury claim to the extent such claim is caused by or results from compliance with a design provided by Buyer, inclusion of a design feature required by Buyer, damage or accident to Equipment or any part or component thereof during or after shipment, the use of Equipment for an application or to process a material other than the particular application and material for which it is designed and intended, a change or modification to Equipment (unless the change or modification is made by or in accordance with written instructions of Seller), misuse, abuse or neglect of Equipment, deterioration of Equipment by erosion, abrasion or chemical action, the material being processed with Equipment, any non-Seller Equipment, product or system with which Seller Equipment is used, installed or incorporated, the defacement, removal, modification or deactivation of any warning label or safety feature, or improper installation (except for installation provided or supervised by Seller), operation or maintenance of Equipment. Seller's obligation to defend, indemnify and hold harmless Buyer against a claim shall be subject to and conditioned upon Buyer giving Seller written notice of such claim (including all known material facts related thereto) within ten days after it is asserted against Buyer (provided that the failure to give Seller written notice of a claim as provided herein shall relieve Seller from its obligations hereunder only if and to the extent Seller is prejudiced thereby) and Buyer granting Seller exclusive direction and control of the investigation, defense and settlement of such claim, including, but not limited to, selection of legal counsel to represent Buyer at Seller's expense. Seller reserves the right to modify to make non-infringing any Equipment that is alleged or found to infringe any patent and/or to substitute non-infringing Equipment for any Equipment that is alleged or found to infringe any patent. This indemnification provision does not apply to Used Equipment. USED EQUIPMENT IS SOLD "AS IS" WITHOUT ANY WARRANTY OR INDEMNIFICATION. BUYER ASSUMES ALL RISKS AND LIABILITIES FOR USED EQUIPMENT.

7. **Buyer Indemnity.** Buyer shall defend, indemnify and hold harmless Seller against (a) claims that Equipment infringes any patent to the extent such claim is based upon or arises out of the use of Equipment for an application or to process a material other than the particular application and material for which it is designed and intended, a change or modification to Equipment (unless the change or modification is made by or in accordance with written instructions of Seller), the material being processed with Equipment, any non-Seller Equipment, product or system with which Seller Equipment is used, installed or incorporated, or the use of any intellectual property of Buyer or any of its affiliates, and (b) claims for personal injury to the extent to such personal injury is caused by or results from compliance with a design provided by Buyer, inclusion of a design feature required by Buyer, damage or accident to Equipment or any part or component thereof during or after shipment, the use of Equipment for an application or to process a material other than the particular application and material for which it is designed and intended, a change or modification to Equipment (unless the change or modification is made by or in accordance with written instructions of Seller), misuse, abuse or neglect of Equipment, deterioration of Equipment by erosion, abrasion or chemical action, the material being processed with Equipment, any non-Seller Equipment, product or system with which Seller Equipment is used, installed or incorporated, the defacement, removal, modification or deactivation of any warning label or safety feature, or improper installation (except for installation provided or supervised by Seller), operation or maintenance of Equipment. Buyer's obligation to defend, indemnify and hold harmless Seller against a claim shall be subject to and conditioned upon Seller giving Buyer written notice of such claim (including all known material facts related thereto) within ten days after it is asserted against Seller (provided that the failure to give Buyer written notice of a claim as provided herein shall relieve Buyer from its obligations hereunder only if and to the extent Buyer is prejudiced thereby) and Seller giving Buyer exclusive direction and control of the investigation, defense and settlement of such claim, including, but not limited to, selection of legal counsel to represent Seller at Buyer's expense.

8. **Equipment Changes.** Seller reserves the right to make changes to Equipment or Parts at any time, without prior notice, in its sole discretion.
9. **Buyer Requested Change, Delay or Cancellation.** If Buyer requests a change to Equipment or Parts or a delay or cancellation of delivery of Equipment or Parts for any reason, Seller may impose additional charges. Delivery reschedules, delays, or cancellations will not be permitted within 45 days of the confirmed ship and/or FAT date per Seller's order confirmation. In the case Buyer cancels delivery more than 45 days prior to shipment, the minimum charge will be 20 percent of the price of the not yet manufactured Equipment or Parts cancelled, plus the cost of the labor and Equipment or Parts that has already been manufactured for Buyer, any parts and components that have already been ordered for the cancelled Equipment or Parts.
10. **Safety Features.** New Equipment and new Parts include safety features as shown in Seller's drawings. If Buyer requests additional safety features, Seller may impose additional charges. Buyer is solely responsible for determining and assessing the adequacy of warnings and safety features, including, but not limited to, determining and assessing whether warnings and safety features satisfy and comply with local legal requirements and safety practices. Buyer assumes all risks and liabilities if warnings or safety features provided with Equipment or Parts fail to satisfy and comply with local legal requirements and safety practices. Buyer also assumes all risks and liabilities if any warnings or safety features on Equipment or Parts are defaced, removed, modified or deactivated.
11. **Seller Quotes, Etc.** All quotes, proposals, prints, drawings and other information furnished to Buyer by Seller are furnished for information purposes only, are intended solely for the internal use of Buyer, shall be required to be held in confidence by Buyer, shall remain the property of Seller, and shall not be disclosed or used in any manner other than as specifically authorized by Seller.
12. **Force Majeure.** Seller is not liable for any failure or delay in delivering, repairing, or replacing the Equipment or Parts or any portion thereof if such failure or delay is due to causes beyond its control or caused by factory or labor conditions, including, but not limited to, fire, wind, flood, earthquake, failure or delay in its sources of supply of materials, parts or components, act of terrorism or sabotage, widespread illness or disease, failure, delay, unavailability or interruption in transportation, utility or communications services, and governmental or regulatory order, action or request; provided, however, that if any Equipment or Parts or component thereof called for hereunder is to be manufactured especially for Buyer, and manufacture is suspended by the Buyer or terminated for any reason, Buyer agrees to take delivery and make payment for such Equipment or Parts or component thereof as has been completed.
13. **Waiver.** No failure or delay of Seller to insist upon strict performance of any rights or powers under this Agreement shall operate as a waiver thereof, nor shall any other single or partial exercise of such right or power preclude any other further exercise of any rights or remedies provided by law unless agreed to by Seller in writing. Any waiver of this Agreement shall not operate or be construed as a waiver of any subsequent breach by the Seller.
14. **Assignment.** This Agreement may not be transferred or assigned by Buyer without the prior written consent of Seller. Seller may assign its rights and obligations under this Agreement in whole or in part to a third party acquirer in the event of a merger, acquisition or sale of all or substantially all its assets.
15. **Specific Performance.** Buyer agrees that monetary damages may not be sufficient to remedy a breach hereunder and that Seller shall be entitled to seek specific performance and injunctive or other equitable relief.
16. **Severability.** If any provision of the contract is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this contract shall remain in effect.
17. **Export/Import.** Buyer shall be solely responsible for obtaining all approvals, authorizations licenses and permits, complying with all laws, rules and regulations, and making all arrangements related to the export of Equipment or Parts supplied by Seller from the United States and/or the import of Equipment or Parts supplied by Seller into a country outside the United States. Equipment or Parts and related technical information, data, documents and materials are subject to export controls under U.S. Export Administration Regulations and U.S. Department of the Treasury embargo regulations. Buyer shall strictly comply with all such export controls, shall fully cooperate with Seller in any official or unofficial investigation, audit or inspection that relates to any of such controls, and shall not export, re-export, divert or transfer, directly or indirectly, any Equipment or Parts or related technical information, data, documents or materials to any party or destination or for any use that is subject to an embargo or otherwise prohibited pursuant to such controls, unless and until Buyer obtains all required US governmental and regulatory approvals, authorizations, licenses and permits.
18. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, without regard to its conflict of law provisions.
19. **Payment.** All prices and rental fees charged by Seller to Buyer are FCA or ExWorks Waterloo, Ontario Canada. Quoted prices include duties and brokerage charges at the rates set forth in Quote, but exclude taxes, freight and insurance and any duties and brokerage charges at rates in excess of the rates set forth in Quote, all of which shall be the sole liability and responsibility of Buyer. If Buyer claims an exemption from any tax, a valid and proper tax exemption certificate must accompany order. Unless otherwise set forth in Seller's invoice, proposal, lease, or purchase order acknowledgment, all payments shall be made in U.S. dollars.
- Seller's payment terms are as follows.**
- (i) **Orders less than \$80,000 USD:** 100% of order value will be, due 30 days after shipment.
 - (ii) **Orders over \$80,000 USD that do not have SAT (Site Acceptance test), IQ/OQ, or any other onsite service procedures (the "On Site Service Procedures") and/ or FAT (Factory Acceptance Test):** 40% of order value is required to be paid as a non-refundable deposit with placement of order and remaining balance of order value will be due 30 days after shipment.
 - (iii) **Orders over \$80,000 USD with FAT procedure only (no "On Site Service Procedures"):** 40% of order value is required to be paid as a non-refundable deposit with placement of order and remaining balance of order value will be due 30 days after completion of FAT and shipment.
 - (iv) **Orders over \$80,000 USD with both FAT and On Site Service Procedures:** 40% of order value is required to be paid as a non-refundable deposit with placement of order. 50% of order value will be due 30 days after completion of FAT and shipment, and remaining balance of order value will be due 30 days after completion of "On Site Service Procedures" or 30 days after shipment, whichever occurs first.
- All amounts not paid and received in full by the due date are subject to a finance charge at the rate of one and one half percent (1.5%) per month (eighteen percent (18%) per annum) or, if less, at the maximum rate permitted by law, from the date due until paid in full.