

## MICROMERITICS' TERMS AND CONDITIONS (20 June 2006)

Micromeritics accepts orders subject to the following terms and conditions:

1. **ERRORS AND MODIFICATIONS** If any errors or omissions pertinent to the order have been made either by Micromeritics or the customer, Micromeritics shall be so notified by the customer within seven days after receipt of this sales confirmation. Otherwise, the order will be deemed accepted by the customer and Micromeritics as shown. Micromeritics reserves the right to correct any and all typographical, computational or clerical errors made in the preparation of quotations and specifications. Any representations, warranties or terms regarding this order made by any person, including dealers and representatives of Micromeritics, which are inconsistent or in conflict with the terms and conditions stated on the face of this order or herein shall not be binding upon Micromeritics and shall not modify this contract unless made and approved in writing by customer and Micromeritics.
  2. **CUSTOMER'S PURCHASE ORDER FORM** Orders submitted on the customer's own purchase order form which may contain terms or conditions modifying, adding to or inconsistent with the terms and conditions herein contained will not be binding on the company, and the terms and conditions herein contained shall be the sole and exclusive terms and conditions relating to this order.
  3. **PRICING** Prices are subject to change by Micromeritics without notice. The minimum order to be accepted by Micromeritics is \$100.00 (U.S.A. funds). Micromeritics certifies that the prices shown hereon are not in excess of the maximum prices regularly charged to our most favorite customers for like items sold in similar quantities under the same conditions. The prices quoted are subject to any additions necessary to cover federal, state, municipal or other taxes of any nature, or like taxes or import duties, applicable to the equipment or services described, or applicable to the production, sales, distribution or delivery thereof, all of which shall be paid by purchaser.
  4. **ORDERS AND ORDERING INFORMATION** All orders are subject to acceptance by Micromeritics at its main office in Norcross, Georgia, U.S.A. Orders should be sent to Micromeritics Instrument Corporation, One Micromeritics Drive, Norcross, Georgia 30093, U.S.A. This order may be cancelled by the purchaser only upon written notice to Micromeritics, and if Micromeritics shall receive written notice of cancellation more than seven days after receipt of this order, customer shall pay to Micromeritics a cancellation charge of 25% of the dollar amount of the order, which Micromeritics and customer agree is necessary as liquidated damages and not as penalty for customer's improper cancellation of the order, which charge the customer acknowledges as reasonable.
  5. **TERMS OF PAYMENT** The net amount of invoice is due and payable no later than thirty days after date of invoice, provided, however, that if Micromeritics determines in its sole discretion that the financial condition of the purchaser at any time does not justify continuation of production or shipment on the terms of payment specified, Micromeritics may require of customer full or partial payment in advance. Interest shall be charged at the rate of 1.5% per month on the unpaid balance on any monies owed Micromeritics by customer over thirty days after date of submission of any invoice.
  6. **SHIPMENT AND RISK OF LOSS** All prices are FOB, our factory, Norcross, Georgia. In the absence of shipping directions from the purchaser at the time of order, Micromeritics will use its sole discretion as to the method and route of shipment, and Micromeritics shall have no liability for any shipment delay whatsoever. No insurance will be placed by Micromeritics on the instruments or equipment which are the subject of this order unless customer shall give Micromeritics written notice to place said insurance and in such amount as described by customer ten days prior to shipment. Risk of loss for any damage to the goods which are the subject of this order shifts to the customer upon delivery of the order by Micromeritics to the first carrier of said goods. Any claim for loss, damage or non-delivery must be rendered by the customer against the transportation company within ten days of receipt.
  7. **REGULATORY PROVISIONS** Micromeritics certifies that it will comply with all applicable requirements of Sections 6, 7 and 12 of the Fair Labor Standards Act, as amended, and of regulations and orders of the United States Department of Labor issued under Section 14 thereof. The company will also comply with any other applicable federal, state and local laws. This cannot, however, be guaranteed in the case of equipment not manufactured by Micromeritics, but only resold by them. Equipment will not necessarily be designed or manufactured to conform to any particular ordinance or regulation, unless specifically contracted to do so. Micromeritics assumes no liability for difficulties experienced by the purchaser should any product fail to comply with any particular ordinance or regulation, or for any damages or fines occasioned thereby.
  8. **WARRANTY AND LIMITATION OF DAMAGES** Micromeritics warrants for one year from the date of shipment each instrument which is the subject of this purchase order to be free from defect in material and workmanship impairing its usefulness under normal use and service conditions, except as stated below.
- (a) Certain products sold by Micromeritics are products of reputable manufacturers, sold under their respective brand or trade name. Micromeritics therefore makes no express or implied warranty as to such products. Micromeritics will use its best efforts to obtain from the manufacturer, in accordance with its customary practice, the repair and replacement of such of his products that may prove defective in workmanship or material. Service charges made by such manufacturer are the responsibility of the ultimate purchaser, unless otherwise agreed in writing between Micromeritics and customer.
  - (b) If an instrument or product which is the subject of this order is found defective during the warranty period, replacement parts may, at the discretion of Micromeritics, be sent to be installed by the purchaser, e.g., printed circuit boards, check valves, seals, etc.
  - (c) Expendable items, e.g., sample tubes, detector source lamps, indicator lamps, fuses, valve plugs (rotors) or stems, seals and o-rings, ferrules, etc., are excluded from warranty except for manufacturing defects. Items such as these which perform satisfactorily during the first forty-five days after shipment are assumed to be free of manufacturing defects.
  - (d) No instrument or product shall be returned to Micromeritics prior to notification of the alleged defect and authorization by Micromeritics to return the instrument or product. All repairs or replacements are made subject to factory inspection of returned parts.
  - (e) These products are sold for quality control, research, and laboratory use only. Persons intending to use these products for medical or clinical investigation on animals or humans, or for diagnostic purposes, are solely responsible for such use and for compliance with the pertinent provisions of the Federal Food, Drug and Cosmetics Act (U.S.A.) and all regulations thereunder; and all pertinent laws and regulations of the state or county.
  - (f) All statements, technical information, and recommendations are based on tests we believe to be reliable, but their accuracy or completeness is not guaranteed.

Micromeritics and customer further agree that the liability of Micromeritics is limited under the aforesaid warranty to the repair, servicing and adjustment, free of charge at Micromeritics plant, of any instrument or defective part, when returned prepaid to Micromeritics' examination discloses to have been defective. The purchaser is responsible for all transportation charges involving the shipment of materials for warranty repairs. Failure of any instrument or product due to operator error, improper installation, unauthorized repair or alteration, failure of utilities, or environmental contamination will not constitute a breach of warranty by Micromeritics, and Micromeritics will not be subject to liability therefore. The materials of construction used in Micromeritics' instruments and other products were chosen after extensive testing and experience for their reliability and durability; however, it is agreed that these materials cannot be totally guaranteed against wear and/or decomposition by chemical action (corrosion) as a result of normal use.

It is further agreed between Micromeritics and customer that Micromeritics shall not be liable for any consequential or other damages from the use of any of its products other than the liability to repair, service and adjust as described above.

THIS STATES MICROMERITICS' ENTIRE LIABILITY WITH RESPECT TO THE SALE OF ITS PRODUCTS PURSUANT TO THIS SALES CONFIRMATION.

OTHER THAN THE WARRANTY HERETOFORE DESCRIBED, SELLER MAKES NO WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, UNLESS EXPRESSLY INCLUDED ON THE FACE OF THIS ORDER FORM BETWEEN MICROMERITICS AND CUSTOMER, AND ALL OTHER WARRANTIES ARE EXCLUDED AND DISCLAIMED.

Repair parts are warranted to be free from defects in material and workmanship for ninety days from the date of shipment.

Customer acknowledges that the obligations of the aforesaid warranty will be limited as per the following conditions:

9. **PATENTS** If any article subject to this order is manufactured to purchaser's specifications and design, and such design or specification, or the process of its fabrications is covered by a patent, the purchaser's acceptance of this sales confirmation will constitute an agreement to hold Micromeritics harmless from any action, cost or expense occasioned by any infringement by the company of such patent or patents held by either customer or any third party in the performance of this contract, and customer agrees to hold Micromeritics harmless from any such patent infringement action. This hold harmless and indemnity applies to goods modified by Micromeritics at the request of the customer, as well as for goods manufactured specially to the customer's specifications.
10. **DELIVERY** Shipping dates are approximate and based on the prompt receipt of all necessary information by Micromeritics. Micromeritics shall not be liable for any delay in production or delivery, or loss of damage due to delay or failure to make delivery in any event, including but not limited to delay or failure caused by fire, strikes, civil or military authority, war, hostilities, government control, restrictions or prohibitions, the failure of Micromeritics suppliers to make reasonable delivery of materials or components, or other causes beyond a reasonable control of Micromeritics. In case of such delay, the date or dates of the completion of this order shall be extended for a period equal to the time loss occurring by reason of such delay.
11. **EXPENSES OF LITIGATION** In the event that Micromeritics shall be required to employ counsel in order to collect the money due under this order, customer agrees that it shall pay Micromeritics reasonable attorneys' fees and court cost in order to compensate Micromeritics for having to employ counsel for collection. The Venue for legal actions shall be in Gwinnett County, GA.
12. **ASSIGNMENT** Micromeritics may assign this order or any portion thereof for performance by a third party, but Micromeritics shall be responsible for proper completion of the order under the terms of this order form in the event of such assignment.