

**Infilco**

July 19, 2007

Lee County Utilities  
Attn: Mr. Thomas Mammott, P.E.  
1500 Monroe Street  
Fort Myers, FL 33902

Subj: Accelerator Clarifier/Softener  
Greenleaf Filter Control  
Olga Water Treatment Plant

Dear Mr. Mammott:

Thank you for considering Infilco Degremont, Inc. (IDI) for the supply of authorized replacement parts for the IDI Accelerator Clarifier/Softeners and Greenleaf Filter Control at the Olga Water Treatment Plant.

Infilco Degremont, Inc. has designed and supplied the Accelerator Clarifier/Softener and Greenleaf Filter Control equipment for more than twenty-five (25) years. We are the sole supplier for parts for this equipment. The authorized representative in the State of Florida for Infilco Degremont, Inc. equipment and parts is as follows:

Moss – Kelley, Inc.  
3300 University Drive – Suite 705  
Coral Springs, FL 33065

Attn: Mr. Jim Kelley / Mr. John Mushinsky

Tel: 954-755-2092

Please feel free to contact me if you should have additional questions.

Sincerely,

Paul D. Spofford  
Regional Business Manager

Cc: Bob Lake  
Director – Infilcare (After Market Services)

## INFILCO-DEGREMONT, INC. ("Infilco") CONDITIONS OF SALE

1. **TERMS AND CONDITIONS OF SALE.** The Terms and Conditions of Sale set forth herein, and any supplements which may be attached hereto, constitute the full and final expression of the contract for the sale of products or services (hereinafter referred to as Products or Services) to Purchaser, and supersedes all prior quotations, purchase orders, correspondence or communications whether written or oral between the Purchaser and Infilco. Notwithstanding any contrary language in Purchaser's purchase order, correspondence or other form of acknowledgement, Purchaser shall be bound by these Terms and Conditions when it sends a purchase order or otherwise indicates acceptance of this Contract, or when it accepts delivery from Infilco of the Products or Services. The contract for sale of the Products and Services is expressly limited to the terms and conditions of sale stated herein. Any additional or different terms proposed by Purchaser are rejected, unless expressly agreed to in writing by Infilco. No contract shall exist except as herein provided.

2. **COMPLETE AGREEMENT.** No amendment or modification hereto nor any statement, representation or warranty not contained herein shall be binding on Infilco unless made in writing by an authorized representative of Infilco. Prior dealings, usage of the trade or a course of performance shall not be relevant to determine the meaning of this Contract even though the accepting or acquiescing party had knowledge of the nature of the performance and the opportunity for objection.

3. **ADEQUATE ASSURANCES.** If, in the judgment of Infilco, the financial condition of the Purchaser, at any time during the period of the contract, does not justify the terms of payment specified, Infilco may require full or partial payment in advance, or an acceptable form of payment guarantee such as a bank letter of credit, or other modifications to the terms of payment.

4. **DELAYED PAYMENT.** If payment are not made in accordance with the terms contained herein, a service charge may, without prejudice to the right of Infilco to immediate payment, be added in an amount equal to the lower of 1.5% per month or fraction thereof or the highest legal rate on the unpaid balance. *2-2 FL 5 after 45 days*

5. **TAXES.** The Purchase Price does not include any taxes. Purchaser shall be responsible for the payment of all taxes applicable to, or arising from the transaction, the Products, its sale, value or use, or any Services performed in connection therewith regardless of the person or entity actually taxed.

6. **RISK OF LOSS.** Risk of loss or damage to the Products, or any part thereof, shall pass to Purchaser upon delivery of the Products or part to Purchaser at the f.o.b. point stated herein.

7. **EXCUSABLE DELAY.** Infilco shall not be liable for any delay in performance or failure to perform due to fire, flood or any other act of God, strike or other labor difficulty, act of any civil or military authority or of Purchaser, Engineer, or Owner, insurrection, riot, embargo, unavailability or delays in transportation or car shortages, or any other cause beyond Infilco's reasonable control. In the event Infilco's performance is delayed by any of the foregoing causes, Infilco's schedule for performance shall be extended accordingly without penalty. If Purchaser's, Engineer's or Owner's actions delay Infilco's performance, Purchaser shall pay Infilco any additional costs incurred by Infilco resulting from such delay. If Purchaser or Owner orders Infilco to delay shipment of Products, or any part thereof, or by other actions refuses to permit Infilco to deliver Products, or any part thereof, to Owner's Premises, in addition to paying Infilco for costs of storage and insurance, Purchaser shall also pay Infilco's invoice for such stored Products, or any part thereof, as if they had been delivered to Owner's Premises on the date such Products, or any part thereof, were produced and ready for shipment.

8. **PROPRIETARY INFORMATION.** All information, plans, drawings, tracings, specifications, programs, reports, models, mock-ups, designs, calculations, schedules, technical information, data, manuals, proposals, CADD documents and other materials, including those in electronic form (collectively the "Documents") prepared and furnished by Infilco are Instruments of Service for use solely with respect to this Project. Infilco shall be deemed the author and owner of these Instruments of Service and shall retain all common law, statutory and other reserved rights, including copyrights. The Purchaser, Engineer, or Owner shall not use these Instruments of Service for future additions or alterations to this Project or for other projects, without the prior written agreement by the Infilco. The Documents furnished by Infilco are proprietary to Infilco, submitted in strict confidence and shall not be reproduced, transmitted, disclosed or used in any other manner without Infilco's written authorization.

9. **INSPECTION BY PURCHASER.** Purchaser may inspect the Products at the point of manufacture, provided that such inspection is arranged and conducted so as not to unreasonably interfere with Infilco's or the manufacturer's operations. Purchaser's inspection of the Products and release for shipment shall constitute Purchaser's acceptance of the Products as conforming to the requirements of this Contract.

10. **WARRANTY OF TITLE.** Infilco warrants and guarantees that title to all Products covered by any invoice submitted to Purchaser, whether incorporated into the Project or not, will pass to Purchaser no later than the time of payment free and

clear of all Liens. This paragraph does not apply to any Documents covered by paragraphs above entitled "Proprietary Information."

11. **WARRANTY.** Infilco warrants the Products shall conform to the description contained herein and be free from defects in material and workmanship for a period of one (1) year from date the Products are initially placed in operation or eighteen (18) months from date the Products are shipped, whichever occurs first. Upon Infilco's receipt of written notice within thirty (30) days of discovery of any defect, and a determination by Infilco that such defect is covered under the foregoing warranty, Infilco's responsibility is limited to correction of the defect by, at Infilco's option, repair or replacement of the defective part or parts, f.o.b. factory. This warranty does not cover failure or damage due to storage, installation, operation or maintenance not in conformance with Infilco's written instructions and requirements or due to accident, misuse, abuse, neglect or corrosion. This warranty does not cover reimbursement for labor, gaining access, removal, installation, temporary power or any other expenses that may be incurred with repair or replacement. This warranty does not apply to equipment not manufactured by Infilco. Infilco limits itself to extending the same warranty it receives from the supplier. Infilco shall have no responsibility for the condition of primed or finish painted surfaces after the Products leave their point of manufacture. Field touch-up of shop primed or painted surfaces are normal and shall be at Purchaser or Owner's expense. Any touch-up or repainting required to shop primed or painted surfaces, for reasons other than improper or incorrect application in the shop, shall be Purchaser or Owner's responsibility. **UNLESS STATED ELSEWHERE HEREIN, INFILCO PROVIDES NO WARRANTY OF PRODUCT PERFORMANCE OR PROCESS RESULTS. THE FOREGOING WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE CORRECTION OF NON-CONFORMITIES IN THE MANNER AND FOR THE PERIOD OF TIME PROVIDED ABOVE SHALL CONSTITUTE INFILCO'S SOLE LIABILITY AND PURCHASER'S EXCLUSIVE REMEDY FOR FAILURE OF INFILCO TO MEET ITS WARRANTY OBLIGATIONS, WHETHER CLAIMS OF PURCHASER ARE BASED IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY) OR OTHERWISE.**

12. **BACKCHARGES.** Infilco shall not be liable for any charges incurred by Purchaser for work, repairs, replacements or alterations to the Products, without Infilco's prior written authorization, and any adverse consequences resulting from such unauthorized work shall be Purchaser's full responsibility.

13. **LIQUIDATED DAMAGES.** Contracts which include liquidated damages clause for failure to meet shipping or job completion promises are not acceptable or binding upon Infilco, unless such clauses are specifically accepted in writing by an authorized representative of Infilco at its headquarters office.

14. **LIMITATION OF LIABILITY. THE REMEDIES OF THE PURCHASER SET FORTH IN THIS CONTRACT ARE EXCLUSIVE AND ARE ITS SOLE REMEDIES FOR FAILURE OF INFILCO TO COMPLY WITH ITS OBLIGATIONS HEREUNDER.** Notwithstanding any provision in this Contract to the contrary, in no event shall Infilco be liable for any special, incidental, indirect, statutory, exemplary, punitive or consequential damages, of any kind whatsoever, or for any lost profits, business or revenue, loss of use or goodwill, or other lost economic advantage, arising out of or related to or arising from Infilco's obligations under this Contract or the breach hereof, whether such claims are based on breach of contract, breach of warranty, strict liability, tort, any federal or state statutory claim, or any other legal theory and even if Infilco knew, should have known, or has been advised of the possibility of such damages. **THE TOTAL CUMULATIVE LIABILITY OF INFILCO ARISING FROM OR RELATED TO THIS CONTRACT SHALL NOT EXCEED THE PRICE OF THE PRODUCT OR SERVICES ON WHICH SUCH LIABILITY IS BASED.** In no circumstance will any liability under any portion of this Contract or associated contracts exceed the total Purchase Price. In the event that more than one claim is substantiated, the aggregate amount of all claims combined will not exceed the total Purchase Price. The limitation specified in this section shall survive and apply even if any limited remedy specified herein is determined to have failed of its essential purpose.

15. **CANCELLATION BY PURCHASER.** If Purchaser cancels this Contract or refuses to accept delivery of the Products, Purchaser shall be liable to Infilco for reasonable cancellation charges, including loss of anticipated profits, administrative costs, commissions to sales representatives, costs incurred by Infilco for all work performed or in process up to the time of cancellation or refusal to accept delivery, cancellation charges from Infilco's suppliers or subcontractors, and any other expenses incurred by Infilco in connection with Purchaser's cancellation or refusal to accept delivery.

16. **DEFAULT BY PURCHASER.** Without incurring any liability or waiving any claim for damages Infilco may have against Purchaser, Infilco may refuse to make or delay making delivery and/or withhold any service if: (a) Infilco becomes aware of facts which, in its judgment, render Purchaser's financial condition unsatisfactory or cast doubt on Purchaser's willingness or ability to pay for the Products and/or services; (b) the Purchaser becomes insolvent; (c) the Purchaser has a petition under any

chapter of the bankruptcy laws filed by or against it, (d) the Purchaser makes a general assignment for the benefit of its creditors, (e) the Purchaser has a receiver requested for or appointed for it, (f) the Purchaser fails to comply with any of its material obligations under its Contract with Inflico, its contract with Owner or any other contract with Inflico, or (g) the Purchaser should fail to make prompt payment to Inflico in accordance with the terms of this Contract, then Inflico may, after first giving Purchaser ten (10) days written notice to cure such default, if Purchaser fails to cure or initiate satisfactory cure during such ten-day period, either (i) stop all work until such default has been cured and recover from Purchaser all reasonable costs and expenses incurred by Inflico resulting from Purchaser's default or (ii) terminate this Contract and recover from Purchaser as cancellation charges all costs and expenses incurred by Inflico up to time of and in connection with such termination including reasonable allowance for Inflico's overhead, administration expenses and profits, such reasonable allowance to be based on prevailing industry practice. If Purchaser is late in paying the Purchase Price or any partial payment due under this Contract, or otherwise breaches this Contract, Inflico shall be entitled to the maximum interest rate allowed by law on the overdue amount, and on its damages, calculated from the date of default in payment or other breach, plus court costs, reasonable attorneys' fees and other expenses incurred in any effort to collect.

**17 DEFAULT BY INFILCO.** In the event of any default by Inflico and prior to Purchaser terminating the work for default, Purchaser shall give fourteen (14) days written notice of default to Inflico. Inflico shall remedy the default to the reasonable satisfaction of the Purchaser within fourteen (14) days of receipt of such written notice or, if such default cannot reasonably be remedied within such fourteen (14) day period, Inflico shall promptly begin to remedy the default within the fourteen (14) day period and thereafter diligently prosecute to conclusion all acts necessary to remedy the default, in which event such default shall be deemed to be remedied.

#### **18 PATENT AND COPYRIGHT INFRINGEMENT**

- (a) Inflico shall defend any action or proceeding brought against Purchaser based on any claim that the Products, or any part thereof, or the operation or use of the Products or any part thereof, constitutes infringement of any United States patent or copyright, now or hereafter issued. Purchaser shall give prompt written notice to Inflico of any such action or proceeding and will reasonably provide authority, information and assistance (at Purchaser's expense) in the defense of same. Inflico shall indemnify and hold harmless Purchaser from and against all damages and costs, including but not limited to attorneys' fees and expenses awarded against Purchaser or Inflico in any such action or proceeding. Inflico agrees to keep Purchaser informed of all developments in the defense of such actions.
- (b) If Purchaser is enjoined from the operation or use of the Products, or any part thereof, as the result of any patent or copyright suit, claim, or proceeding, Inflico shall at its sole expense take reasonable steps to procure the right to operate or use the Products. If Inflico cannot so procure such right within a reasonable time, Inflico shall promptly, at Inflico's option and at Inflico's expense, (i) modify the Products so as to avoid infringement of any such patent or copyright, (ii) replace said Products with Products that do not infringe or violate any such patent or copyright, or (iii) as a last resort, remove the Products and refund the purchase price. In no case does Inflico agree to pay any recovery based upon its Purchaser's savings or profit through use of Inflico's Products whether the use be special or ordinary. The foregoing states the entire liability of Inflico for patent or copyright infringement.
- (c) Paragraphs (a) and (b) above shall not be applicable to any suit, claim or proceeding based on infringement or violation of a patent or copyright (i) arising out of the use of Inflico's Products in combination with non-Inflico recommended Products; (ii) relating solely to a particular process or product of a particular manufacturer specified by Purchaser, Engineer or Owner and not offered or recommended by Inflico to Purchaser, Engineer, or Owner or (iii) arising from modifications to the Products by Purchaser or Owner or its agents after acceptance of the Products. If the suit, claim or proceeding is based upon events set forth in the preceding sentence, Purchaser, Engineer or Owner shall defend, indemnify and hold harmless Inflico to the same extent Inflico is obligated to defend, indemnify and hold harmless Purchaser in Paragraph (a) above.

**19 DISPUTE AVOIDANCE AND RESOLUTION** The parties are fully committed to working with each other and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, Inflico and Purchaser commit to resolving such disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the work. Inflico and Purchaser will first attempt to resolve disputes or disagreements at the field level through discussions between Inflico's Representative and Purchaser's

Representative. If a dispute or disagreement cannot be resolved through Inflico's Representative and Purchaser's Representative, upon the request of either party, Inflico's Senior Representative and Purchaser's Senior Representative shall meet as soon as conveniently possible, but in no case later than thirty (30) days after such a request is made, to attempt to resolve such dispute or disagreement. Prior to any meetings between the Senior Representatives, the parties will exchange relevant information that will assist the parties in resolving their dispute or disagreement. If after meeting the Senior Representatives determine that the dispute or disagreement cannot be resolved on terms satisfactory to both parties, the parties shall submit the dispute or disagreement to non-binding mediation. The mediation shall be conducted by a mutually agreeable impartial mediator, or if the parties cannot so agree, a mediator designated by the American Arbitration Association ("AAA") pursuant to its Construction Industry Mediation Rules. The mediation will be governed by and conducted pursuant to a mediation agreement negotiated by the parties or, if the parties cannot so agree, by procedures established by the mediator. For purposes of any Process Performance Guarantee, the above procedures shall also apply for any dispute with the Owner.

**20 ARBITRATION** Any claims, disputes or controversies between the parties arising out of or relating to this Contract, or the breach thereof, which have not been resolved in accordance with the Dispute Avoidance and Resolution procedures contained herein shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the AAA then in effect, unless the parties mutually agree otherwise. The award of the arbitrator(s) shall be final and binding upon the parties without the right of appeal to the courts. Judgement may be entered upon it in accordance with applicable law by any court having jurisdiction thereof. Inflico and Purchaser expressly agree that any arbitration pursuant to this provision may be joined or consolidated with any arbitration involving any other person or entity (i) necessary to resolve the claim, dispute or controversy, or (ii) substantially involved in or affected by such claim, dispute or controversy. Both Inflico and Purchaser will include appropriate provisions in all contracts they execute with other parties in connection with the Project to require such joinder or consolidation. The prevailing party in any arbitration, or any other final, binding dispute proceeding upon which the parties may agree, shall be entitled to recover from the other party reasonable attorneys' fees and expenses incurred by the prevailing party. For purposes of any Process Performance Guarantee, the above procedures shall also apply to the Owner.

**21. NOTICES** Unless otherwise provided, any notices to be given hereunder shall be given in writing and shall be deemed effectively given (i) upon personal delivery to the party to be notified, (ii) on confirmation of receipt by fax by the party to be notified, (iii) one business day after deposit with a reputable overnight courier, prepaid for overnight delivery and addressed as set forth below, or (iv) three days after deposit with the U.S. Post Office, postage prepaid, registered or certified, with return receipt requested.

**22. SUCCESSORSHIP** Inflico and Purchaser intend that the provisions of this Contract are binding upon the parties, their employees, agents, heirs, successors and assigns.

**23. ASSIGNMENT** Neither Inflico nor Purchaser may assign this Contract without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed. Any prohibited assignment shall be null and void.

**24. SEVERABILITY.** If any term, condition or provision of this Contract or the application thereof to any party or circumstance shall at any time or to any extent be invalid or unenforceable, then the remainder of this Contract, or the application of such term, condition or provision to parties or circumstances other than those which it is held invalid or unenforceable, shall not be affected thereby, and each term, condition and provision of this Contract shall be valid and enforceable to the fullest extent permitted by law.

**25. GOVERNING LAW; JURISDICTION** This Contract shall be governed by, interpreted and enforced in accordance with the laws of the Commonwealth of Virginia, without regard to conflicts of law principles. Each party irrevocably consents to the exclusive jurisdiction of the courts of the Commonwealth of Virginia and the federal courts situated in the Commonwealth of Virginia, in connection with any action to enforce the provisions of this Agreement, to recover damages or other relief for breach or default under this Contract, or otherwise arising under or by reason of this Contract.

**26 NO WAIVER** The failure of either party to insist upon or enforce strict performance by the other party of any provision of this Contract or to exercise any right under this Contract shall not be construed as a waiver or relinquishment to any extent of such party's right to assert or rely upon any such provision or right in that or any other instance; rather, the same shall be and remain in full force and effect.