

**TERMS AND CONDITIONS OF SALE FOR
SOFTWARE LICENCES
ON THE OXFORD INSTRUMENTS E-COMMERCE
WEBSITE**

1. INTERPRETATION

1.1 In these Terms:

"Affiliate" an entity which is directly or indirectly controlled, is controlled by or is under common control with another company. For the purpose of this definition, "control", "controlled by" and "under common control with" means the ownership of at least 50% of the voting securities or other ownership interest or the possession directly or indirectly of the power to direct the management or policies of such entity;

"Americas" means the countries of North, Central, and South America;

"AO" means the written acknowledgement of an Order issued by the Company, via-email, to the Licensee following the Order;

"Contract" means the Terms and AO;

"Company" means ModusLink B.V, located at Wapenrustlaan 11-31, Apeldoorn, Netherlands;

"EULA" means the End User Licence Agreement available via this link: <https://www.oxinst.com/assets/uploads/estore/e-Store-EULA.pdf>;

"liability in relation to" means liabilities, losses, damages, costs (including without limitation legal costs on a full indemnity basis and value added tax and other applicable taxation), expenses, actions, claims, proceedings and demands whatsoever arising directly or indirectly out of or in connection with;

"Licensee" means the legal or natural person who purchases the Software from the Company as confirmed in an applicable AO;

"Licensor" means Oxford Instruments Nanotechnology Tools Limited trading as Oxford Instruments Nanoanalysis;

"Order" means an order placed by the Licensee on the Company for Software via the Website;

"Price" means subject to these Terms, the price for the Software as displayed on the Website and confirmed in an applicable AO;

"Software" means the computer program which is licenced to the Licensee pursuant to an Order;

"Terms" means these terms and conditions;

"Website" means www.estore.oxinst.com, www.estore.oxinst.co.uk, www.estore.oxinst.eu, or www.estore.oxinst.us as applicable; and

"Working Day" means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

1.2 The Contract shall comprise solely these Terms and the AO. The Contract constitutes the entire agreement in relation to its subject matter; any terms or provisions contained in any documentation provided by the Licensee are expressly rejected. No Contract or commitment shall exist until the Company has processed payment and received clear funds in full.

1.3 Any Contract provision invalid or unenforceable for any purpose shall be severed for that purpose but otherwise remain valid and

enforceable and shall not affect the validity of the remainder of the Contract.

1.4 A payment shall be deemed made when credited to the payee's bank account and is cleared funds.

1.5 English is the authentic text of the Contract and all notices or other communications under or relating to it shall be in writing in English. Any translation will be for guidance only.

1.6 By agreeing to these Terms, the Licensee represents and warrants that the Licensee is the age of majority or older and has the legal right to use the payment means selected. Verification of the information provided by the Licensee may be required prior to the acceptance of an Order or completion of any purchase.

1.7 The Licensee should print a copy of these Terms for future reference.

2. SELLING ENTITY

2.1 The Company is the merchant and seller of record of the Software sold on the Website. If the Software is purchased by a Licensee located outside of the Americas, the Software is sold by the Company and shall be provided to the Company by Oxford Instruments GmbH or its Affiliate. If the Software is purchased by a Licensee located in the Americas, the Software is sold by the Company and shall be provided to the Company by Oxford Instruments America, Inc. or its Affiliate (which together with Oxford Instruments GmbH or its Affiliate shall be referred to as "Oxford Instruments"). The Contract is between the Company and the Licensee and the Licensee shall be invoiced by the Company.

2.2 The Licensee's purchase and use of the Software is subject to the Licensee agreeing and accepting the terms of the EULA which shall form a separate contract between the Licensee and Licensor. If the Licensee does not accept the terms of the EULA, the Contract shall be terminated immediately.

3. SPECIFICATION AND VARIATION

3.1 Any description on the Website and any documentation issued by the Company or Licensor relating to the Software are issued and published for the sole purpose of giving the Licensee an overview of the Software and do not form part of the Contract.

3.2 The display of the Software on the Website is not an offer and may be withdrawn or modified at any time without notice by the Company. The Company shall not be liable to the Licensee for any modification, suspension or discontinuance of such Software.

4. ORDER PLACEMENT AND CANCELLATION

4.1 The Licensee acknowledges that when an Order is placed via the Website the Licensee is making a request to licence the Software subject to these Terms and the terms of the EULA. The issue of an AO is confirmation that such request has been accepted by the Company and Licensor. If the Company and/or Licensor is unable to supply the Software for any reason, the Company or the Licensor shall inform the Licensee by e-mail and the Company shall refund any

sums paid by the Licensee for the Software. The Company and the Licensor shall have no other liability to the Licensee arising from the Company and/or Licensor not accepting the Licensee's Order.

5. PRICES AND PAYMENT

5.1 Subject to any obvious error, the description and price of the Software will be as quoted on the Website at the date the Order is placed.

5.2 The Company reserves the right to increase the Price from that advertised on the Website at its discretion and for any reason prior to the supply of the Software. Where this affects the Price payable by the Licensee and the Licensee does not wish to proceed at the increased price a full refund will be provided by the Company.

5.3 The total Price displayed on the Website shall exclude value added tax at the applicable rate. The Price shall exclude, and the Licensee shall be responsible for the payment of, value added tax and any other applicable taxes and duties, and other related costs and expenses, unless explicitly stated.

5.4 Payment for the Software must be made by credit card or debit card or bank transfer. The Price and any other applicable charges shall be paid when the Order is placed by the Licensee via the Website. The Licensee shall receive an electronic invoice within seven (7) days following payment.

5.5 Payment shall be made in the applicable currency based on the location selected by the Licensee. The Company shall not be liable for, nor bear the cost of, any banking transaction charges or surcharges for any cross-border transactions made by the Licensee.

5.6 The Licensee agrees to provide current, complete and accurate purchase and account information for all purchases made via the Website. The Licensee agrees to promptly update account and other information, including without limitation e-mail address and credit or debit card numbers and expiration dates, so that the Company can complete the Licensee's transactions and contact the Licensee as needed. Neither the Company nor the Licensor shall have any liability for any losses incurred by the Licensee which arise from the Licensee's failure to comply with the requirements of this clause 5.6

6. PROVISION OF SOFTWARE

6.1 The provision and use of the Software shall be subject to the terms of the EULA between the Licensor and the Licensee.

6.2 Neither the Company nor Licensor warrant that the use of the Software by the Licensee will be uninterrupted or error-free.

6.3 The Licensee accepts responsibility for the selection of the Software to achieve its intended results and acknowledges that the Software has not been developed to meet the individual requirements of the Licensee.

6.4 The Licensee shall be responsible for ensuring that it has the appropriate hardware on which to install the Software.

7. EXCLUSION AND LIMITATION OF LIABILITY

7.1 The Licensee acknowledges that the Company's obligations and liabilities in respect of the Software are exhaustively defined in these Terms and that such express obligations are in lieu of and to the exclusion of any other warranty, condition, term, undertaking or representation of any kind, express or implied, statutory or otherwise, relating to the Software.

7.2 The Company shall not be liable for any loss which represents, or

which is loss of profit, revenue, benefit, anticipated savings or goodwill, loss of use of any asset, loss of data, business interruption, management costs or third-party liability, consequential or indirect loss.

7.3 The aggregate liability of the Company (whether in contract, tort, breach of statutory duty or otherwise) for all breaches under or non-performance of its obligations or contemplated by any Contract shall not exceed a sum equal to the amount paid for any Software the subject of such Contract, save that this sub-clause shall not limit or exclude any liability of the Company which cannot be effectively excluded in law.

7.4 The Licensee shall not rely upon any representation concerning the Software unless made by the Company or the Licensor in writing save that nothing in the Contract or these Terms shall exclude liability for fraudulent misrepresentation.

7.5 Any liability of the Company under any warranty, indemnity or other obligation stated or confirmed in the AO is subject to all exclusions and limitations in these Terms.

8. REGULATORY COMPLIANCE AND LICENCES

8.1 The Software will comply with mandatory regulations applicable to the non-consumer sale of the Software at the date the Software is provided to the Licensee but no other warranty or undertaking as to regulatory compliance in any applicable jurisdiction is given or to be implied unless specifically given in any AO. The Licensee shall comply with applicable laws relating to the Software.

8.2 The Licensee shall obtain in good time any applicable licences, permits and approvals relating to and/or required for the Software and will indemnify the Company against all liability in relation to the Software provided without them. The performance of any of the Company's obligations in the Contract are subject to obtaining any applicable licences, consents, permits or approvals and the Company shall not be liable if it or the Licensee is unable to obtain these or they are delayed, revoked, cancelled, withheld, suspended or withdrawn for any reason.

8.3 The Licensee acknowledges that the provision of Software may be contingent upon the export controls of applicable jurisdictions. If the requisite governmental authorizations cannot be obtained, or they are delayed, revoked or cancelled for whatever reason, the Company shall not be liable to the Licensee for any loss or damage or other financial penalty of any kind.

8.4 The Licensee represents that it is not a Restricted Party, which shall be deemed to include any person or entity: (1) located in or a national of Cuba, Iran, Libya, North Korea, Sudan, Syria, or any other countries that may, from time to time, become subject to U.S. export controls for anti-terrorism reasons or with which U.S. persons are generally prohibited from engaging in financial transactions; (2) on the U.S. Department of Commerce Denied Person's Entity List or Unverified List; U.S. Department of the Treasury list of Specially Designated Nationals and Blocked Persons; or U.S. Department of State List of Debarred Parties; (3) engaged in activities involving nuclear materials or weapons, missile or rocket technologies, or proliferation of chemical or biological weapons; or (4) affiliated with or a part of any non-U.S. military organization.

8.5 The Company reserves the right, but is not obligated, to limit the sales of the Software to any person, geographic region or jurisdiction. The Company may exercise this right on a case-by-case basis. The Company reserves the right to refuse any Order placed by the Licensee. The Company may, in its sole discretion, limit or cancel quantities purchased per Licensee or per Order. These restrictions may include Orders placed by or under the same Licensee account, the same credit card, and/ or Orders that use the same billing address. If the Company makes a change to or cancels an Order, the Company may attempt to notify the Licensee by contacting the e-mail and/or billing address/ phone number

provided at the time the Order was made. The Company reserves the right to limit or prohibit Orders that, in its sole discretion, appear to be placed by dealers, resellers or distributors.

9. INTELLECTUAL PROPERTY RIGHTS

9.1 All inventions, designs, copyrights and processes and all and any other intellectual/ industrial property rights whether or not registered or registerable and all goodwill associated thereto relevant to the Software and all specifications, designs, programs or other material issued by or on behalf of the Company or the Licensor shall, as between the Company and the Licensee and the Licensor and the Licensee, remain the absolute property of the Company or the Licensor, as applicable. The Licensee shall not acquire any right or interest in the same except save for the grant of a licence to use the Software on the terms of the EULA.

10. FORCE MAJEURE

10.1 Neither the Company nor Licensor nor Oxford Instruments shall be liable for any failure to perform their respective obligations hereunder by reason of any cause whatsoever beyond their reasonable control (including, without limitation, the following force majeure events: acts of God; earthquake, natural disaster, explosion, typhoon, flood, fire; war, invasion, hostilities, terrorist threats or attacks, civil commotion, unrest or riots; sanctions, embargoes or blockades; national or regional emergencies; any labour or trade disputes, stoppages, slowdowns or strikes; pandemic, epidemic or quarantine; delay or failure to obtain, or withdrawal, cancellation or revocation of any required consent, permit or license; shortage of power or transportation facilities; supply chain disruptions; government order or law; or any other events beyond the control of the Company or Licensor or Oxford Instruments). In the event that the Company's or Licensor's or Oxford Instruments' failure or delay remains uncured for a period of one hundred and fifty (150) consecutive days following written notice given by the Company or Licensor or Oxford Instruments, the Company's and Licensor's and Oxford Instruments' liability shall be limited to refunding the Licensee a sum equal to the price paid by the Licensee for any Software which the Company and/or the Licensor and/or Oxford Instruments is unable to provide.

11. GENERAL

11.1 No indulgence, forbearance, partial exercise of any right or remedy or previous waiver shall prejudice any rights or remedies. Remedies shall be cumulative, and no choice of remedy shall preclude any other remedy.

11.2 The Licensee shall not assign, mortgage, charge, sub-let or otherwise dispose of the Contract or any rights thereunder in whole or

in part.

11.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

11.4 Save for the Licensor and Oxford Instruments, a person who is not a party to the Contract shall have no rights under or in connection with it. For the avoidance of doubt, in the event that the Licensee has any claim against the Licensor or Oxford Instruments, the Licensee hereby acknowledges and agrees that the Licensor and/or Oxford Instruments shall be entitled to rely on all the limitations and exclusions set out in the Contract *mutatis mutandis* including, but not limited to, those set out at clause 7 of these Terms.

11.5 The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

11.6 A Contract for Software sold by the Company to a Licensee located outside of the Americas shall be governed and construed in accordance with English law and the Licensee shall irrevocably submit to the exclusive jurisdiction of the Courts of England. A Contract for Software sold by the Company to a Licensee located in the Americas shall be governed and construed in accordance with the internal laws of the State of Massachusetts without giving effect to any choice or conflict of law provision or rule (whether the State of Massachusetts or any other jurisdiction) and the Licensee shall irrevocably submit to the exclusive jurisdiction of the courts of the State of Massachusetts.

11.7 Notwithstanding the provisions of clause 11.6 above, the Company may apply for any provisional or conservatory measure or interim relief in any court having jurisdiction in the Licensee's country or the country where the Software is to be provided.