

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

**1. INTERPRETATION**

1.1 In these terms ("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 acceptance of the Order issued by the Company, via e-mail, to the Purchaser following the Order;

"Applicable Guarantee Period" means in relation to any Goods the guarantee period applicable to those Goods, being twelve (12) months from date of shipment to the Purchaser, unless otherwise stated, and subject to clauses 9.4 and 9.5;

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

"Contract" means the agreement between the Purchaser and the Company for the supply of the Goods and consisting of the documents referred to in clause 1.2 below;

"Goods" means the goods listed in the AO;

"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;

"Order" means an order placed by the Purchaser on the Company for Goods via the Website;

"Pre-Order Goods" means Goods which are out of stock as indicated by the Website;

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

"Purchaser" means the purchaser of the Goods as stated in any applicable AO;

"Website" means [www.estore.oxinst.com](http://www.estore.oxinst.com), [www.estore.oxinst.co.uk](http://www.estore.oxinst.co.uk), [www.estore.oxinst.eu](http://www.estore.oxinst.eu), or [www.estore.oxinst.us](http://www.estore.oxinst.us) as applicable.

1.2 The Contract shall comprise solely these Terms and any AO. In the event of any inconsistency, these Terms shall prevail. The Contract is the entire agreement between the Company and the Purchaser in relation to its subject matter; any terms or provisions contained in any documentation provided by the Purchaser are expressly rejected.

1.3 Variations of the Contract shall be effective only if agreed in writing and will then prevail over these Terms.

1.4 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.

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

1.6 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.

1.7 By agreeing to these Terms, the Purchaser represents and warrants that the Purchaser 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 Purchaser may be required prior to the acceptance of an Order or completion of any purchase.

1.8 The Purchaser 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 Goods sold on the Website. If the Goods are to be delivered to a Purchaser located outside of the Americas, the Goods are sold by the Company and shall be provided to the Company by Oxford Instruments GmbH or its Affiliate. If the Goods are to be delivered to a Purchaser located in the Americas, the Goods are 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 Purchaser and the Purchaser shall be invoiced by the Company.

**3. SPECIFICATION AND VARIATION**

3.1 The display of the Goods 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 Purchaser for any modification, suspension or discontinuance of such Goods.

3.2 The Company reserves the right to amend the specification of the Goods if required by any applicable statutory or regulatory requirement or if such alteration does not materially affect the performance or utility of the Goods.

**4. ORDER PLACEMENT AND CANCELLATION**

4.1 Please follow the onscreen prompts to place an Order. Each Order is an offer by you to buy the Goods specified in the Order subject to these Terms.

4.2 No Contract or commitment shall exist until the Company has processed payment and received clear funds in full. If the Company is unable to supply the Purchaser with the Goods for any reason, the Company shall inform the Purchaser by e-mail and the Company's liability shall be to provide a refund of any sums paid by the Purchaser for those Goods, including any delivery costs charged, as soon as possible.

4.3 It is the responsibility of the Purchaser to ensure the Purchaser's Order is complete and accurate before the Order is submitted. Our order process allows you to check and amend any errors before submitting your Order to us. Please check the Order carefully before confirming it. You are responsible for ensuring that your Order is complete and accurate.

4.4 Once an Order has been placed by the Purchaser, the Purchaser cannot cancel or change such Order without the prior written consent of the Company.

4.5 The Company may cancel or reject any Orders in the event that the Goods ordered are displayed at an incorrect price, whether or not the AO has been issued. The Company shall reimburse the

Purchaser any sums paid by the Purchaser for such Goods subject to a cancellation.

4.6 The images of the Goods on the Website are for illustrative purposes only. Although we have made every effort to display the colours accurately, we cannot guarantee that your computer's display of the colours accurately reflect the colour of the Goods. The colour of your Goods may vary slightly from those images.

## 5. PRICES AND PAYMENT

5.1 Subject to any obvious error, the description of the Goods and the corresponding Price will be as stated and quoted on the Website at the date the Order is placed.

5.2 The total Price of the Goods displayed on the Website when the Order is placed by the Purchaser shall include value added tax at the applicable rate. The Price shall exclude, and the Purchaser shall be responsible for payment of, any other applicable taxes and duties, packaging, carriage, insurance, documentation and installation charges. Your Order may be subject to import duties and taxes which are applied when the delivery reaches your destination. Please note that we have no control over these charges and we cannot predict their amount.

5.3 Charges for expedited delivery, if applicable, are in addition to the standard shipping charge. Standard and expedited shipping charges will be displayed on the Website before the Purchaser places an Order.

5.4 Payment for the Goods must be made by credit or debit card, bank transfer or by a credit financing arrangement if made available to the Purchaser on the Website. The Price and any other applicable charges shall be paid, and the Purchaser's debit card will be charged, when the Order is placed by the Purchaser via the Website. The Purchaser 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 Purchaser. 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 Purchaser.

5.6 The Purchaser agrees to provide current, complete and accurate purchase and account information for all purchases made via the Website. The Purchaser 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 Purchaser's transactions and contact the Purchaser as needed.

## 6. RISK AND PROPERTY

Risk in the Goods shall pass to the Purchaser on delivery. Title in the Goods shall pass to the Purchaser on the later of either receipt of full payment by the Company or delivery of the Goods.

## 7. DELIVERY AND RESCHEDULE

7.1 Save as otherwise agreed in writing by the Company delivery of the Goods shall be made by the Company in accordance with DAP, Incoterms 2020 to the place of delivery as stated in the AO.

7.2 Where the Purchaser's Order contains Pre-Order Goods, the Purchaser's Order shall not be dispatched for delivery until all Goods are in-stock and such Order is complete. Should the Purchaser wish to receive all in-stock items in advance of the Pre-Order Goods, the Purchaser will need to place two separate orders for in-stock and Pre-Order Goods.

7.3 The Purchaser shall receive a shipment confirmation e-mail with carrier tracking information on the day the Purchaser's Order is dispatched for delivery. All shipments are made by an independent

third party ("Logistic Partner") indicated on the Website.

7.4 Whilst the Company will seek to meet the stated delivery time as stated on the shipment confirmation e-mail, it is approximate, and the Company shall not incur liability in relation to late delivery. If no time for delivery is stated, the Purchaser shall accept the Goods when ready for delivery.

7.5 If the Purchaser fails to take delivery or to give adequate delivery instructions, the Company may (without prejudice to its other rights) store or dispose of the Goods, in which case the Purchaser shall pay to the Company upon request the amount of any reasonable storage or disposal charges.

7.6 Should the Purchaser wish to vary a delivery schedule, it shall make a request in writing to the Company. Rescheduling restrictions apply and the Company is not obliged to accept a request for a re-schedule delivery of Goods. Should the Company agree in writing to amend a delivery schedule, charges may apply. Such charges shall be applied at the time the re-schedule is agreed.

## 8. INSPECTION

8.1 The Purchaser shall inspect the Goods and within fourteen (14) days of their delivery, shall give written notice to the Company of any damage or claim. In the absence of such notice, the Goods shall be deemed to comply with the Contract and the Purchaser shall accept them. The Goods are sold as a batch and without prejudice to the Purchaser's right to reject all the Goods the Purchaser may not reject only some of the Goods.

8.2 Where the Purchaser makes a claim for damaged or defective Goods within fourteen (14) days of delivery, the Purchaser shall return the Goods to the Logistic Partner to the address specified by the Company. The Company shall, at its sole discretion, replace the Goods or refund the Price of the Goods to the Purchaser.

8.3 The Purchaser hereby undertakes to comply with such instructions as maybe issued by the Company from time to time concerning any safety precautions or other measures required to be taken in order to ensure that the Goods do not cause damage or injury to any person (including the Purchaser) or property. The Company shall not be liable for any damage or claim arising out or in connection with the Purchaser's failure to comply with its obligation in this clause 8.3.

## 9. GUARANTEE

9.1 If within the Applicable Guarantee Period any Goods prove defective by reason of faulty design, workmanship or materials, Purchaser should report such defects to the Company using the 'Contact Us' section of the Website.

9.2 If within the Applicable Guarantee Period, and subject to clause 11.3, the Company will adjust, repair or replace them as it sees fit free of charge provided that:

- (a) this clause 9 shall not apply to any Goods that are displayed on the Website as "Used". Any such Goods shall be sold as seen and no warranties of any kind are given in respect of such Goods;
- (b) the Purchaser gives written notice of the defect (with reasonable relevant information) to the Company as soon as reasonably practicable and within the Applicable Guarantee Period;
- (c) the Goods have been used solely for their proper purpose and in accordance with the operating instructions;
- (d) the defect has not been caused by fire, accident, misuse, neglect, incorrect installation by the Purchaser or its customers, agents or servants, unauthorised alteration, repair or maintenance or the use of sub-standard consumables and has not arisen from fair

wear and tear;

- (e) the defect has not arisen from any design, specification, component or material supplied by or on behalf of the Purchaser;
- (f) no part of the Goods has been replaced with a part not supplied or approved by the Company;
- (g) payment in full of all sums due in respect of the Goods has been made save for where the Purchaser has paid for the Goods via a credit financing arrangement;
- (h) the Purchaser shall be liable for any costs incurred by the Company in responding to claims caused by operator error or incorrect application or other default of the Purchaser or other third party; and
- (i) the Purchaser shall accord the Company sufficient access to the Goods to enable its staff to inspect and adjust, repair, remove or replace the Goods.

9.3 Where the Company shall repair the Goods, the Purchaser shall return them to an address provided by the Company. The risk in the Goods shall at all times remain the Purchaser's and they shall be packaged as the Company instructs and dispatched at the Purchaser's expense. Costs of carriage on the Goods' return to the Purchaser shall be borne by the Company where the defect is covered by this guarantee.

9.4 If the Goods incorporate or are goods or services provided by a third party, the obligations of the Company in respect of such goods or services shall not exceed the original warranty terms of such third party including the warranty period given by the third party.

9.5 The Applicable Guarantee Period for any Goods replaced or repaired or any corrective services pursuant to the initial guarantee shall be the remaining period, if any, of such initial guarantee period.

## **10. EXCLUSION AND LIMITATION OF LIABILITY**

10.1 The Company only supplies the Goods for internal use of the Purchaser's business. The Purchaser agrees not to use the Goods for any resale purposes.

10.2 The Company shall have no obligation in respect of the Goods except for its undertaking in clause 9 above (the "Guarantee") and as expressly stated in the Contract.

10.3 If the Company has repaired or replaced the Goods pursuant to the Guarantee, it shall have no further liability in respect of such defect or fault in the Goods unless a repair or replacement is not possible in which case the Company's liability shall be limited to refunding any monies paid in respect of such defective Goods.

10.4 The Purchaser acknowledges that the Company's obligations and liabilities in respect of the Goods 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 Goods including, without limitation, as to the condition, quality, performance or fitness for the purpose of the Goods or any part of them.

10.5 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.

10.6 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 one and a half times the amount paid for any Goods 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.

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

10.8 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.

## **11. REGULATORY COMPLIANCE, LICENCES AND PRE-DELIVERY TESTS**

11.1 The Goods will comply with mandatory regulations applicable to the manufacture and non-consumer sale of the Goods at the date of delivery but no other warranty or undertaking as to regulatory compliance in any applicable jurisdiction is given or to be implied unless specifically given in writing signed by a director of the Company or stated in any AO. The Purchaser shall comply with applicable laws relating to the Goods, their use and disposal.

11.2 The Purchaser shall obtain in good time any applicable licences, permits and approvals relating to import and to the installation and/or operation of the Goods and will indemnify the Company against all liability in relation to Goods supplied 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 Purchaser is unable to obtain these or they are delayed, revoked, cancelled, withheld, suspended or withdrawn for any reason.

11.3 The Purchaser acknowledges that export of the Goods is contingent upon the export controls of applicable jurisdictions. In the event that the requisite governmental authorizations cannot be obtained, or they are delayed, revoked, cancelled, withheld, suspended or withdrawn for whatever reason, the Company shall not be liable to the Purchaser for any loss or damage or other financial penalty of any kind.

11.4 The Purchaser 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. or U.K. export controls for anti-terrorism reasons or with which U.S. or U.K. persons are generally prohibited from engaging in financial transactions; (2) on the Consolidated List of Financial Sanctions Targets in the UK; the Office of Foreign Assets Control Sanctions List; EU External Relations Sanctions List; the United Nations Security Council Consolidated List; the U.S. Department of Commerce Denied Person's List, 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.

11.5 The Purchaser shall strictly comply with all applicable export laws, controls and regulations. The Purchaser shall not export, re-export, divert, transfer or disclose, directly or indirectly, any Goods or related technical data, materials or documents or any product thereof to any Restricted Party or to any country (or any national or resident thereof) which the U.S. or U.K. Government determines from time to time is a country (or end-user) to which such export, re-export, diversion, transfer or disclosure is restricted, without obtaining the prior written authorization of the Company and the applicable government agency.

11.6 The Purchaser shall not transfer the Goods, or any replica of

them to an entity in the future if the Purchaser knows or suspects that the Goods are intended or likely to be used for any purpose connected with chemical, biological or nuclear weapons, or missiles capable of delivering such weapons; or in any nuclear explosive activity or unsafeguarded nuclear fuel cycle. The Purchaser will not supply the Goods to an entity in the future in a destination subject to UN, EU or OSCE embargo where that act would be in breach of the terms of that embargo.

11.7 The Company reserves the right, but are not obligated, to limit the sales of the Goods 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 Purchaser. The Company may, in its sole discretion, limit or cancel quantities purchased per Purchaser or per order. These restrictions may include Orders placed by or under the same Purchaser account, the same credit or debit card, and/or Orders that use the same billing and/or shipping address. In the event that the Company makes a change to or cancels an Order, the Company may attempt to notify the Purchaser 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.

## **12. INTELLECTUAL PROPERTY RIGHTS**

12.1 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 Goods and all specifications, designs, programs or other material issued by or on behalf of the Company shall, as between the Company and the Purchaser, remain the absolute property of the Company. The Purchaser shall not acquire any right or interest in the same except, if the AO so requires, the Company shall grant or procure the grant of a licence to use relevant software with the Goods to or at the direction of the Purchaser.

## **13. FORCE MAJEURE**

13.1 Neither the Company 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 Oxford Instruments). In the event that the Company'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 Oxford Instruments, the Company's and Oxford Instruments' liability shall be limited to refunding the Purchaser a sum equal to the price paid by the Purchaser for any Goods which the Company and/or Oxford Instruments is unable to provide.

## **14. GENERAL**

14.1 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.

14.2 The Purchaser shall not assign, mortgage, charge, sub-let or otherwise dispose of the Contract or any rights thereunder in whole or in part.

14.3 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.

14.4 A person who is not a party to the Contract shall have no rights under or in connection with it. Notwithstanding the foregoing and the other provisions of the Contract, in the event that the Purchaser has any claim against Oxford Instruments, the Purchaser hereby acknowledges and agrees that 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 10 of these Terms.

14.5 All Contracts for Goods sold by the Company to Purchasers located outside of the Americas shall be governed and construed in accordance with English law and the Purchaser irrevocably submits to the exclusive jurisdiction of the Courts of England. All Contracts for Goods sold by the Company to Purchasers 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 Purchaser irrevocably submits to the exclusive jurisdiction of the courts of the State of Massachusetts.

14.6 Notwithstanding the provisions of clause 14.5 above, the Company may apply for any provisional or conservatory measures or interim relief in any court having jurisdiction in the Purchaser's country or the country where the Goods are then located.