

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

1. INTERPRETATION

1.1 In these Terms:

“Affiliate” an entity which the Service Provider directly or indirectly controls, is controlled by or is under common control with. 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 Purchaser following the Order;

“Booking Confirmation” means the written response to an Order by the Service Provider to the Purchaser confirming whether the Services requested can be provided and are available on the dates requested by the Purchaser;

“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 Services which shall consist of the documents referred to in clause 1.2 below;

“Delegate(s)” means the person(s) attending the Training (the Purchaser and the Delegate may be the same person);

“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 Services via the Website;

“Price” means subject to these Terms, the price for the Services as displayed on the Website and confirmed in an applicable AO and Booking Confirmation;

“Product” means the software and/or hardware products (which have previously been designed, written, manufactured and/or supplied by the Service Provider) with respect to which the Purchaser has purchased Support;

“Purchaser” means the legal or natural person who purchases the Services from the Company as confirmed in an applicable AO and Booking Confirmation;

“Service Provider” means either Oxford Instruments GmbH or Oxford Instruments America, Inc., as the case may be in accordance with clause 2, or their Affiliates;

“Services” means the Training and/or Support to be provided by the Service Provider in accordance with an Order and Booking Confirmation;

“Support” means the provision of technical support provided by the

Service Provider via the Internet and/or telephone, with respect to the Product;

“Terms” means these terms and conditions;

“Training” means the course(s), whether provided physically or virtually, upon which the Purchaser has booked the Delegate(s) in accordance with these Terms;

“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, the AO and any Booking Confirmation. In the event of any inconsistency, the Booking Confirmation shall prevail. The Contract constitutes the entire agreement in relation to its subject matter; any terms or provisions contained in any documentation provided by the Purchaser are expressly rejected. No Contract or commitment shall exist until the Company has processed payment and received clear funds in full.

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 Services sold on the Website. If the Services are to be provided to a Purchaser located outside of the Americas, the Services are sold by the Company and shall be provided by Oxford Instruments GmbH or its Affiliate. If the Services are to be provided to a Purchaser located in the Americas, the Services are sold by the Company and shall be provided by Oxford Instruments America, Inc. or its Affiliate. The Contract is between the Company and the Purchaser and the Purchaser shall be invoiced by the Company.

3. SPECIFICATION AND VARIATION

3.1 Any description on the Website and any documentation issued

by the Company and/ or Service Provider relating to the Services are issued and published for the sole purpose of giving the Purchaser an overview of the Services and do not form part of the Contract.

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

4. ORDER PLACEMENT AND CANCELLATION

4.1 The Purchaser acknowledges that when an Order is placed via the Website the Purchaser is making a request for the performance of such Services by the Service Provider. Receipt of an AO is not confirmation that such request has been accepted by the Service Provider. The Service Provider shall confirm if it is able to supply the Services by issuing a Booking Confirmation. If the Service Provider is unable to supply the Services for any reason, the Company or the Service Provider shall inform the Purchaser via the Booking Confirmation and the Company shall refund any sums paid by the Purchaser for those Services, as soon as possible. Any associated costs and expenses including without limitation for travel and/or accommodation for the Delegate's attendance at any Training shall be payable by the Purchaser and such bookings are made entirely at the Purchaser's risk. The Company and/or the Service Provider shall not be liable for any such costs and expenses incurred by the Purchaser including without limitation in the event of cancellation of the Services for any reason.

4.2 It is the responsibility of the Purchaser to ensure that the Delegate(s) meet any prerequisites of the Services (such requirements may be made known to the Purchaser and/or Delegates on the Website or in the Booking Confirmation).

4.3 The Purchaser may cancel an Order by notifying the Service Provider in writing as soon as is reasonably practicable. If the Purchaser and/ or Delegate(s) fail to attend the Services on the date and time and at the venue set out in the Booking Confirmation without giving prior written notice to the Service Provider, the Purchaser shall be deemed to have cancelled the Order. In the event of cancellation by the Purchaser, the Purchaser may be liable to pay a cancellation fee. Such fees shall be applied at the time the cancellation is received and paid to the Service Provider.

4.4 If the Purchaser and/or Delegate need to reschedule the date of and/or amend the name(s) of the Delegate(s) scheduled to attend the Services as set out on the Booking Confirmation, it shall make a request in writing to the Service Provider no less than fourteen (14) days prior to the booked date. The Service Provider is not obliged to accept such request, but if the Service Provider agrees in writing to an amended booked date and/or Delegate(s), charges may apply. Such charges shall be applied at the time the re-schedule is agreed and paid to the Service Provider.

4.5 The Company and/or Service Provider reserve the right to cancel or modify the date, time and/or venue for the Services. In these circumstances the Company and/or Service Provider will endeavor to provide notice of such cancellation or change to the Purchaser. The Company and/or the Service Provider reserve the right to refuse to provide the Training to any Delegate who does not meet any prerequisites of the Services pursuant to clause 4.2. Where the Company and/or the Service Provider cancels the Services in full, or the Delegate(s) are unable to attend the Services on the modified date and/ or time or at the modified venue the Company and/or Service Provider's liability shall be limited to a refund of any sums paid to the Company by the Purchaser for the Services.

4.6 The Company and/or Service Provider may cancel or reject any

Orders if the Services ordered are displayed at the incorrect price, whether or not the AO and/or Booking Confirmation has been issued. The Company shall reimburse the Purchaser any sums paid by the Purchaser for such Services subject to a cancellation.

5. PRICES AND PAYMENT

5.1 Subject to any obvious error, the description of the Services and the corresponding Price will be as stated and 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 commencement of the Services. Where this affects the Price payable by the Purchaser and the Purchaser 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 Purchaser shall be responsible for the payment of, value added tax and any other applicable taxes and duties, travel, accommodation and other related costs and expenses, unless explicitly stated.

5.4 Payment for the Services must be made by credit or debit card, or bank transfer. 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 and/ or Service Provider 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. Neither the Company nor Service Provider shall have any liability for any losses incurred by the Purchaser which arise from the Purchaser's failure to comply with the requirements of this clause 5.6

6. PROVISION OF SERVICES

6.1 For Support, the following shall be confirmed by the Service Provider in the Booking Confirmation:

- 6.1.1 the duration of Support;
- 6.1.2 the time and date Support will be provided;
- 6.1.3 the nature of the Support to be provided;

6.2 For Training, the following shall be confirmed by the Service Provider in the Booking Confirmation:

- 6.1.4 the date, time and venue of the Training (where Training is to be provided physically); and
- 6.1.5 the date, time and access details of the Training (where Training is to be provided virtually).

6.3 Unless otherwise indicated on any applicable Booking Confirmation, all Services shall be provided in English.

6.4 The Company warrants that the Services shall be performed with reasonable skill and diligence.

6.5 The Company shall procure that the Service Provider shall provide such personnel to conduct the Services as the Service Provider, in its

sole discretion, deems fit and the Service Provider shall be entitled at any time to substitute such employees with any other person who, in the Service Provider's sole discretion, is deemed suitably qualified to provide the Services.

6.6 Where Training is purchased, the Purchaser shall provide to the Service Provider the name, e-mail address and telephone number of the Delegate(s) who are to attend the Training and shall confirm that the Service Provider is to contact the Delegate(s) directly.

6.7 Where Support is purchased, the Purchaser shall provide to the Service Provider in writing and within fourteen (14) days before the commencement date of the Support as specified in the relevant Booking Confirmation all relevant data requested by the Service Provider in relation to such Support. Where such information is not provided to the Service Provider in accordance with this clause the Company or Service Provider reserves the right to cancel the Support in full and shall incur no liability for such cancellation.

6.8 The Purchaser shall take all precautions to protect its data and shall ensure that a regular back-up arrangement is implemented before, during and after the provision of the Support. Neither the Company or Service Provider shall have any liability to the Purchaser for any loss or corruption of data before, during, or after the provision of Support.

7. EXCLUSION AND LIMITATION OF LIABILITY

7.1 The Purchaser acknowledges that the Company and/or Service Provider's obligations and liabilities in respect of the Services 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 Services.

7.2 The Company and/or Service Provider 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 and/or Service Provider (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 Services 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 Purchaser shall not rely upon any representation concerning the Services unless made by the Company or the Service Provider in writing save that nothing in the Contract or these Terms shall exclude liability for fraudulent misrepresentation.

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

8. REGULATORY COMPLIANCE AND LICENCES

8.1 The Services will comply with mandatory regulations applicable to the non-consumer sale of the Services at the date the Services are provided to the Purchaser 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 and/or Booking Confirmation. The Purchaser shall comply with applicable laws relating to the Services, their use and disposal.

8.2 The Purchaser shall obtain in good time any applicable licences,

permits and approvals relating to and/or required for the Services and will indemnify the Company and/or Service Provider against all liability in relation to the Services provided without them. The performance of any of the Company and/ or Service Provider's obligations in the Contract are subject to obtaining any applicable licences, consents, permits or approvals and the Company and/or Service Provider 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.

8.3 The Purchaser acknowledges that the provision of Services may be contingent upon the export controls of applicable jurisdictions. In the event that the requisite governmental authorizations cannot be obtained, or they are delayed, revoked or cancelled for whatever reason, the Company and/ or Service Provider shall not be liable to the Purchaser for any loss or damage or other financial penalty of any kind.

8.4 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. 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 Services 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 card, and/or Orders that use the same billing 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.

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

10. FORCE MAJEURE

10.1 Neither the Company nor the Service Provider 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 Service Provider). In the event that the Company's or the Service Provider's failure or delay remains uncured for a period of one hundred and fifty (150) consecutive days following written notice given by the Company or Service Provider, the Company's and the Service Provider's liability shall be limited to refunding the Purchaser a sum equal to the price paid by the Purchaser for any Services which the Company and/or the Service Provider 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 Purchaser 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 Subject to any rights of the Service Provider expressly provided hereunder, a person who is not a party to the Contract shall have no rights under or in connection with it.

11.5 All Contracts for Services 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 Services 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.

11.6 Notwithstanding the provisions of clause 11.5 above, the Company may apply for any provisional or conservatory measure or interim relief in any court having jurisdiction in the Purchaser's country or the country where the Services are to be provided.

11.7 Save for the rights of the Service Provider expressly provided in this Contract, this Contract does not give rise to any rights to any third party to enforce any term of this Contract. For the avoidance of doubt, in the event that the Purchaser has any claim against the Service Provider, the Purchaser hereby acknowledges and agrees that the Service Provider 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.