

OXFORD INSTRUMENTS UK - TERMS AND CONDITIONS OF QUOTATION AND SALE FOR GOODS VIA A WEBSITE

1. INTERPRETATION

1.1 In these terms ("Terms"):

"AO" means the written confirmation of the order issued by the Company to the Purchaser following the order;

"Applicable Guarantee Period" means in relation to any Goods the guarantee period applicable to those Goods, subject to clauses 7.3 and 7.4 being either (i) 12 months commencing on the sooner of the date of acceptance of the Goods in question by the Purchaser or 90 days from shipment of the Goods in question or (ii) as otherwise notified in the Company's relevant quotation or AO;

"Company" means of Oxford Instruments Nanotechnology Tools Limited

"Contract" means the agreement between the Purchaser and the Company for the supply of the Goods and consisting of the documents referred to in 1.4 below;

"End User Undertaking" means the document in the form provided by the Company to the Purchaser in relation to Goods to be shipped by the Company outside the UK;

"Goods" means the goods listed in the AO or which the Company otherwise agrees to supply to the Purchaser under the Contract;

"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;

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

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

"Software" means any software used in the operation of the Goods;

"Standard Specification" means the standard design of the Goods and/or layout of the Goods which is current at the time of the issue of an AO; and

"Website" means www.microscopyconsumables.com.

1.2 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.

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

1.4 Save as otherwise agreed in writing by the Company the Contract shall comprise solely these Terms, and any AO. In the event of any inconsistency these Terms shall prevail. Variations of the Contract shall be effective only if agreed in writing and will then prevail over these Terms.

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.

2. QUOTATIONS, SPECIFICATION, VARIATION AND CANCELLATION

2.1 The display of the Goods on the Website is not an offer and may be withdrawn or modified; save as otherwise agreed in writing by the Company no contract or commitment shall exist until the Company sends its AO to the Purchaser.

2.2 The Company may alter the specification of any Goods if this does not materially affect their performance or utility.

2.3 The Company may vary the design, materials or method of construction of the Goods as it reasonably considers appropriate in order to improve performance, design or construction; to respond to availability of various materials or components; or to comply with any safety or regulatory requirements. No such variation shall materially alter the size or proportions or materially worsen the performance of the Goods. The Company shall promptly notify the Purchaser of any such variations and if reasonably practicable shall consult with it upon any variations which are not immaterial.

2.4 If any variation in the Goods or the Contract is agreed or is required for compliance with any applicable law, regulation or safety recommendation the Purchaser shall pay such additional amount as is fair and reasonable and the Company shall have reasonable additional time to perform the Contract.

3. PRICES AND PAYMENT

3.1 Subject to any AO, the Price shall exclude value added tax and any other applicable taxes and duties, packaging, carriage, insurance, documentation and installation charges. Unless costed for in any AO, the Company may make reasonable additional charges for complying with any special requirements of the Purchaser. Payment, subject to any AO, shall be made in sterling at the Company's office in England, clear of any banking transaction charges and without deduction, set off or counterclaim.

3.2 The Price shall be paid when the order is placed by the Purchaser via the Website. The monies will not be taken from the Purchaser's account until the Goods are dispatched.

4. RISK AND PROPERTY

4.1 Title to the Goods shall not pass until payment has been made in accordance with Section 3 of these Terms.

4.2 Risk of damage to or loss of the Goods shall pass to the Purchaser upon the Company first dispatching the Goods from its premises unless any AO specifies otherwise.

5. DELIVERY AND RESCHEDULE

5.1 The estimated date for delivery of the Goods shall be set out in the AO. Save as otherwise agreed in writing by the Company delivery of the Goods shall be made by the Company making the Goods available for collection from its premises and so informing the Purchaser or, if some other place for delivery is stated in any AO, by the Company or its nominated carrier dispatching the Goods from its premises to the stated place. 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. Whilst the Company will seek to meet the stated delivery time, it is approximate and the Company shall not incur liability in relation to late delivery. If no time for delivery is agreed the Purchaser shall accept the Goods when ready for delivery.

5.2 The Company may deliver Goods in instalments constituting separate contracts and delay in delivery of any instalment will not entitle the Purchaser to terminate the Contract, nor permit the set off of any payments in respect of one delivery against any claim in respect of any other delivery. Where Goods are delivered by instalments the Company may issue separate invoices.

5.3 The Purchaser shall clear the Goods for export from the UK and import into the country of delivery unless any AO states otherwise.

5.4 Any delivery times quoted by the Company for the Goods are approximate and shall not be binding upon the Company.

5.5 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.

6. INSPECTION AND ACCEPTANCE

Unless the Company will issue or has issued an acceptance certificate, the Purchaser shall inspect and test the Goods and within 7 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.

7. GUARANTEE

7.1 If within the Applicable Guarantee Period any Goods prove defective by reason of faulty design, workmanship or materials the Company will adjust, repair or replace them as it sees fit free of charge provided that:

- (a) 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;
- (b) the Goods have been used solely for their proper purpose and in accordance with the operating instructions;
- (c) 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;
- (d) the defect has not arisen from any design, specification, component or material supplied by or on behalf of the Purchaser;
- (e) no part of the Goods has been replaced with a part not supplied or approved by the Company;
- (f) payment in full of all sums due in respect of the Goods has been made;
- (g) 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;
- (h) 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;
- (i) the costs of all consumables shall be paid by the Purchaser.

7.2 The Company may repair the Goods in situ or have them returned to its premises; if the latter, 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.

7.3 If the Goods incorporate goods or services provided by a third party, the obligations of the Company in respect of such goods or services shall not exceed the warranty obligations of such third party to the Company nor exceed any time limit upon those obligations.

7.4 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.

8. EXCLUSION AND LIMITATION OF LIABILITY

8.1 In an effort to keep the Contract price as low as possible and as the Purchaser is better able than the Company to quantify loss which it may suffer from a breach of contract and to insure accordingly, the Purchaser agrees to the Company limiting its liability and therefore agrees that save as expressly agreed in writing or as mandatorily implied by law:

- (a) the Company shall have no obligation in respect of the Goods except for its undertaking in clause 7 above ("the Guarantee") and as expressly stated in the Contract;
- (b) 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;
- (c) 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;
- (d) 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.

8.2 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.

8.3 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.

8.4 Save to the extent of any warranty stated or expressly confirmed in the AO (and so far as permitted by law), the Company shall have no liability in respect of any failure by the Goods to recognise date changes and the Purchaser shall satisfy itself in all such respects.

8.5 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 Conditions.

9. REGULATORY COMPLIANCE, LICENCES AND PRE-DELIVERY TESTS

9.1 The Goods will comply with mandatory United Kingdom ("UK") 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 the UK or elsewhere 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. Without limiting the foregoing, where ionising radiation is used in the Goods the Company will upon request provide reasonable advice and assistance to the Purchaser in respect of radiological protection and applicable legal requirements concerning registration and access

9.2 The Purchaser's representatives at the Purchaser's cost may attend inspections and tests of the Goods at the Company's premises required by the Company prior to delivery but if such representatives fail to so attend such tests may be carried out in their absence. If the Company issues an acceptance certificate the Purchaser shall accept the same which shall be conclusive evidence of the Goods' conformity with the Contract and their acceptance by the Purchaser.

9.3 The Purchaser shall obtain in good time any applicable licences, permits and approvals relating to import and export and to the installation and/or operation of the Goods and will indemnify the Company against all liability in relation to Supplies supplied without them. The Company shall not be responsible for any liability in relation to delay in obtaining or failure to obtain such licences, permits or approvals.

9.4 If any Goods are to be shipped by the Company outside the UK the Purchaser shall provide the Company with an End User Undertaking by the Company as soon as practically possible and in any event no later than seven (7) days of issue of the Purchasers purchase order. The Purchaser acknowledges that export of the Goods from the UK is contingent upon the export controls of the United Kingdom and other applicable jurisdictions. In the event that the requisite governmental authorizations cannot be obtained, or they are revoked or cancelled for whatever reason, the Company shall not be liable to the Purchaser in respect of any bond or guarantee or for any loss or damage or other financial penalty of any kind.

10. TERMINATION OF CONTRACT

10.1 The Company may terminate separately all or any of the Contract and every other contract with the Purchaser if:

- (a) the Purchaser fails to make payments to the Company under any contract as they fall due or the Purchaser otherwise breaches any such contract and the breach or non-payment is not remedied within seven days of notice from the Company; or
- (b) the Purchaser is, or is deemed to be, insolvent or suspends payment or performance of its obligations or threatens to do so, or the Company has reasonable grounds for believing it will fail to discharge its obligations under any contract or steps are taken to propose any composition, scheme or arrangement involving the Purchaser and its creditors or obtain an administration order or appoint any administrative or other receiver or manager in relation to, or put in force any legal process against, the Purchaser or any of its property or enforce any security over the Purchaser's property, or repossess any goods in its possession or wind up or dissolve the Purchaser, or sequester its estate or dissolve it or file a petition in bankruptcy or other relief from creditors; or

- (c) control of the Purchaser passes from the present shareholders, owners or controllers to other persons whom the Company in its absolute discretion regards as prejudicial to its reasonable interests; or
- (d) in the reasonable opinion of the Company the Purchaser has ceased or threatened to cease to trade; or
- (e) where the Purchaser is an individual or partnership, he or any partner dies or any steps are taken with a view to making a bankruptcy order against him or any partner; or
- (f) anything corresponding to any of the above occurs outside England and Wales.

10.2 If the Contract is terminated, the Company (without prejudice to its other rights but subject to any relevant mandatory laws) may do any of the following:

- (a) declare immediately payable (and so interest-bearing under clause 3.2) any sums owed by the Purchaser, proceed against the Purchaser for the same and/or damages, and appropriate any payment by the Purchaser as the Company thinks fit (notwithstanding any purported appropriation by the Purchaser);
- (b) suspend further performance of any Contract and/or any credit granted to the Purchaser on any account (and the time for delivery by the Company shall be extended by the period of such suspension);
- (c) take possession of and deal with (including the sale of) any materials and other assets of the Purchaser held by or on behalf of the Company and apply any proceeds of sale in payment of any sums owing under or damages arising in connection with any Contract including any interest and costs arising thereon.

11. INTELLECTUAL PROPERTY AND CONFIDENTIALITY

11.1 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.

11.2 The Purchaser acknowledges that all specifications, design, programs or other material including know-how, plans, drawings and price lists issued by or on behalf of the Company are confidential and agrees not to use them or any other confidential information of the Company for any purpose (other than the purpose for which the information was disclosed) nor reproduce them in any form nor disclose them to third parties. The Purchaser shall not seek to abstract from the Goods any confidential information regarding their design, construction or otherwise (and without limiting the foregoing shall not decompile any software comprised in the Goods) and all rights subsisting in such material are reserved

11.3 The Purchaser shall obtain similar undertakings as those set out in sub-clauses 11.1 and 11.2 from its customers and indemnify the Company against any liability in relation to any failure to do so. The Purchaser shall upon request sign and/or require its customers to sign the software vendors form of non-exclusive licence to use programs necessary to operate the Goods; all obligations of the Company under any contract are conditional upon execution of such agreement and compliance with its terms.

11.4 All Software is licensed and not sold by the Company. The Company hereby grants to the Purchaser a non-exclusive, non-

transferable licence to use the Software solely for the purposes of operating the Goods for their proper designed purpose, but the Purchaser shall have no right to access or use the source code of the Software and shall not copy all or part of the Software unless otherwise expressly agreed in writing by the Company

11.5 All intellectual property and other rights of whatever nature in the Software and the documentation for it are and shall remain the property of the Company or the software vendor.

12. FORCE MAJEURE

The Company shall not be liable for any failure to perform its obligations hereunder by reason of any cause whatsoever beyond its reasonable control (including without limitation trade dispute; fire, flood or act of god; armed conflict; equipment or supply difficulties; any rule or action of any public authority; transportation delays; refusal or delay in granting any necessary licence or permit; or any repudiatory event by the Purchaser). In such circumstances it may terminate the Contract whereupon the Purchaser shall pay a sum equal to the costs to the Company of performing the Contract and the Company's liability shall be limited to repayment of any sums paid in respect of undelivered Goods less such costs.

13. USE OF GOODS AND SAFETY

13.1 The Purchaser shall:

- (a) procure that the Goods (including any goods the subject of services) are used only for the purposes and in the manner for which they were designed and supplied; that all persons likely to use or come into contact with the Goods receive appropriate training and copies of applicable literature supplied by the Company; that all third parties who use or may be affected by or rely upon the Goods are given full and clear warning of any hazards (both patent and latent) associated with them or limitations of their effectiveness and that safe working practices are adopted and complied with. Any warning notices displayed on the Goods must not be removed or obscured; the Purchaser shall procure that any third party to whom the Goods are supplied agrees not to remove or obscure such warning notices and shall take such steps as are reasonable to enforce such agreement;
- (b) promptly comply with any safety recommendation made to it in respect of the Goods (including recall of them) and shall procure compliance by all relevant persons and shall pay the Company's reasonable charges for additional or replacement parts (including installation costs) supplied by the Company for this purpose;
- (c) maintain and make available to the Company all records necessary to enable Goods to be traced to their ultimate buyer or user; and
- (d) indemnify the Company against any liability in relation to any breach of the Purchaser's obligations under this clause 13.1.

14. PURCHASERS EQUIPMENT AND OTHER ITEMS

14.1 The Company shall not be liable for any defect, wastage or other loss whatsoever in, of or arising from equipment, hardware or software or other items (in this clause, "equipment") supplied or made available to the Company by the Purchaser, which equipment shall be held, worked on and used at the Purchaser's risk. Quantities of equipment supplied by the Purchaser shall allow for normal spoilage and fair wear and tear.

14.2 The Company shall not be responsible for any loss, damage, cost or expense arising from, or from any defect, mistake or inaccuracy in any equipment specified or supplied by the Purchaser. Any loss, damage, cost or expense arising therefrom shall be for the sole account of the Purchaser who shall indemnify the Company

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accordingly.

14.3 The Company's liability for equipment specified or provided to the Company by the Purchaser or otherwise held or worked on by the Company on behalf of the Purchaser shall be limited to the lesser of the basic raw material cost of the equipment or an independent external valuation of such equipment.

14.4 Prior to its delivery to the Company or to the Company being granted access to it the Purchaser shall notify the Company of the nature of any equipment to be held or worked on by the Company under the Contract, shall provide adequate warnings and instructions where such equipment is or may be hazardous to safety and shall ensure that it complies with any requirements or descriptions of or in the Contract.

14.5 The Purchaser shall indemnify the Company for any liability in relation to such equipment which could not have been prevented by the Company acting in accordance with the Purchaser's reasonable written instructions and was not caused by the negligence or wilful default of the Company or its employees.

14.6 The Purchaser shall indemnify the Company against any liability in relation to the contamination, damage or loss (due to contact with any radioactive, chemical or other hazardous materials or by the negligence of the Purchaser or its representatives) of any instruments, components, parts or materials brought by the Company to the Purchaser's premises for the purposes of performance of the Contract.

15. GENERAL

15.1 The Purchaser shall indemnify the Company against all liability in relation to any specification, design, information or component which the Purchaser has supplied or arranged for the supply to the Company and warrants that the use of such specifications, designs, information or components will not infringe the rights of any third party.

15.2 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.

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

15.4 After termination (howsoever caused) or cancellation, clauses 4, 8, 11, 13 and 15 shall continue in full effect.

15.5 A person who is not a party to the Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract but this does not affect any right or remedy of a third party which is available apart from that Act.

15.6 All Contracts shall be governed and construed in accordance with English law and the Purchaser irrevocably submits to exclusive jurisdiction of the Courts of England without prejudice to which 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 Supplies are then located.