

Oxford Immunotec Limited - Terms and Conditions of Sale

1. **DEFINITIONS "Purchaser"** means the person, firm, organisation, company or entity who purchases the Products from the Seller; **"Seller"** means Oxford Immunotec Limited, a company incorporated in England (company no. 4516079); **"Contract"** means any contract between the Seller and the Purchaser for the sale and purchase of Products, which Contract shall be subject to (and deemed to incorporate) these terms and conditions; **"Products"** means any products agreed in the Contract to be supplied to the Purchaser by the Seller.
2. **APPLICATION OF TERMS**
- 2.1 Subject to Clause 2.2, the Contract will be on these terms to the exclusion of all other terms and conditions (including any terms or conditions which the Purchaser purports to apply under any purchase order, confirmation of order, specification or other document).
- 2.2 These terms apply to all the Seller's sales and supplies of Products and no variation of these terms will be effective unless expressly agreed in writing by an authorised representative of the Seller. The Seller's territory managers and sales representatives are authorised to sign Contracts.
- 2.3 Each order for Products by the Purchaser from the Seller will be deemed to be an offer by the Purchaser to purchase Products subject to these terms, regardless of whether the Purchaser's order is submitted prior or subsequent to Purchaser's receipt of these terms.
- 2.4 No Contract shall be formed unless and until the Purchaser's offer is accepted by the Seller. The Seller shall be deemed to accept on the earlier to occur of: the Seller delivers the Products to the Purchaser, or a written acceptance of the order is issued by the Seller.
- 2.5 Unless otherwise agreed in writing by both parties, each order for Products placed by the Purchaser shall (if accepted by the Seller) constitute and be governed by a separate Contract. Any quotation is valid for a period stated in the quotation or, if none, for a period of 30 days only from its date, provided that the Seller has not previously withdrawn it.
3. **DESCRIPTION**
- 3.1 The specification of the Products will be as set out in the Seller's current price list or quotation (as the case may be).
- 3.2 All statements (written or oral), drawings, descriptive matter, specifications, and advertising issued by or on behalf of the Seller and any descriptions or illustrations contained in the Seller's catalogues, brochures, web site or otherwise are issued or published for the sole purpose of giving an approximate idea of the products described in them. They will not form part of the Contract.
4. **DELIVERY**
- 4.1 Unless otherwise agreed by the Seller, delivery of the Products will take place DAP (Incoterms 2010) with the place of destination being the Purchaser's premises (as set out in the Contract), subject to recharging certain costs to the Purchaser in accordance with Clause 4.7 and subject to the Purchaser completing its obligations under Clause 6.2. Risk in the Products will pass to the Purchaser on delivery.
- 4.2 Any dates specified by the Seller for delivery of the Products are intended to be an estimated delivery date. If no dates are so specified, delivery will be within a reasonable time. The Seller reserves the right to deliver the Products in instalments and the Purchaser will be invoiced accordingly. Time for delivery is not of the essence.
- 4.3 Where the Purchaser has agreed to purchase a specified quantity of Products and to call-off delivery of those Products over a given time period, it will give the Seller reasonable notice of its delivery requirements during that period. Failure by the Purchaser to take delivery of the total specified quantity of Products in the relevant time period will constitute a material breach of this Contract which is not capable of remedy.
- 4.4 If for any reason the Purchaser will not accept delivery of any of the Products when they are ready at the place of destination, or the Seller is unable to deliver the Products on time (at the place of destination) because the Purchaser has not provided appropriate instructions, documents, licences or authorisations:
- (a) the Products will be deemed to have been delivered to and received by the Purchaser at the place of destination; and
- (b) the Seller may store the Products until delivery whereupon the Purchaser will be liable for all related costs and expenses (including, without limitation, storage and insurance).
- 4.5 The Purchaser will be responsible and provide at its expense adequate and appropriate equipment and manual labour, for unloading the Products at the place of destination.
- 4.6 If the Seller delivers to the Purchaser a quantity of Products more than the quantity set out in the Contract, then the Purchaser may at its option either pay for such Products at the pro rata Contract rate or return the surplus to the Seller, at the Seller's risk and cost.
- 4.7 Unless otherwise agreed by the Seller, Seller will charge the Purchaser and Purchaser shall be obliged to pay to Seller, in addition to the cost of the Products, all of Seller's costs in packaging the Products for shipment and transporting the Products from Seller's premises to the Purchaser's premises. These charges for which Purchaser shall be liable including packaging costs, any dock and airport dues, port rates and customs fees and duties, freight, agency fees and other charges which may be incurred in connection with the Products after the Seller has made the Products available for carriage at its place of business.
- 4.8 The Seller reserves the right to designate minimum order quantities and/or minimum handling charges for any Products.
5. **NON-DELIVERY**
- 5.1 The quantity of any consignment of Products as recorded by the Seller upon dispatch from the Seller's place of business will be conclusive evidence of the quantity received by the Purchaser on delivery unless the Purchaser can provide conclusive evidence proving the contrary.
- 5.2 The Seller will not be liable for any non-delivery or under-delivery of Products (even if caused by the Seller's negligence) unless written notice is given to the Seller within 5 working days of the date when the Products would in the ordinary course of events have been received.
- 5.3 Any liability of the Seller for non-delivery or under-delivery of the Products will be limited to, at Seller's option, replacing the Products within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice issued for such Products.
6. **REGULATORY APPROVAL**
- 6.1 Unless the Purchaser is importing into a country where regulatory approval has been specifically obtained for the Product, it is the sole responsibility of the Purchaser to:
- (a) test and approve the Products, including without limitation determining that the characteristics of the Products comply with all legal and regulatory requirements and
- (b) obtain, where required, all local, statutory and/or regulatory approval for the use, marketing or sale of the Products.
- 6.2 It is the responsibility of the Purchaser to obtain any necessary import licenses or permits necessary for the entry of the Products into the Purchaser's jurisdiction or their delivery to the Purchaser. The Purchaser shall be responsible for any and all customs duties, clearance charges, taxes, broker's fees and other amounts in connection with the importation and delivery of the Products.
7. **RISK/TITLE**
- 7.1 The Products are at the risk of the Purchaser from the time of delivery.
- 7.2 Subject to Clause 7.4, ownership of the Products will not pass to the Purchaser until the Seller has received in full (in cash or cleared funds) all sums due to it in respect of:
- (a) the Products; and
- (b) all other sums which are or which become due to the Seller from the Purchaser on any account.
- 7.3 Until ownership of the Products has passed to the Purchaser, the Purchaser will:
- (a) hold the Products on a fiduciary basis as the Seller's bailee;
- (b) store the Products (at no cost to the Seller) separately from all other goods of the Purchaser or any third party in such a way that they remain readily identifiable as the Seller's property;
- (c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Products;
- (d) maintain the Products in satisfactory condition and keep them insured on the Seller's behalf for their full price against all risks to the reasonable satisfaction of the Seller. On request the Purchaser shall produce the certificate of insurance to the Seller; and
- (e) hold the proceeds of the insurance referred to in Clause 7.3 (d) in trust for the Seller and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.
- 7.4 Ownership of the Products will pass to the Purchaser only if the Purchaser sells the Products in the ordinary course of the Purchaser's business. For the avoidance of doubt any such sale shall be a sale of the Purchaser's property on the Purchaser's own behalf and the Purchaser shall deal as principal when making such a sale.
- 7.5 The Purchaser's right to possession of the Products shall terminate immediately if:
- (a) the Purchaser undergoes any of the events set out in Clause 13.2 (c); or
- (b) the Purchaser purports to encumber or in any way changes any of the Products (except as provided in Clause 7.4).
- 7.6 The Seller shall be entitled to recover payment for the Products notwithstanding that ownership of any of the Products has not passed from the Seller.
- 7.7 The Purchaser grants the Seller, its agents and employees an irrevocable licence at any time to enter any premises where the Products are or may be stored in order to inspect them, or, where the Purchaser's right to possession has terminated, to recover them.
8. **PRICE**
- 8.1 The price for the Products will be that set out on the Seller's current price list, acknowledgement of order or quotation (as the case may be).
- 8.2 The price for the Products will be exclusive of any value added tax and to the extent applicable (unless otherwise expressly agreed in writing by an authorised representative of the Seller) of all costs or charges described in Clause 4.7.
- 8.3 Where an order is placed for goods having a total invoiced value (excluding VAT or other costs and charges described in Clause 4.7) of less than £50 the Seller reserves the right to make an additional charge of £10.
9. **PAYMENT**
- 9.1 The Seller will invoice the Purchaser for the Products together with any other amounts pursuant to Clause 8 on or at any time after dispatch from the Seller's premises.
- 9.2 The Purchaser will pay the amount invoiced in the invoiced currency pursuant to Clause 9.1 in cash or cleared funds within 30 days of the date of the invoice, or within payment terms specified in the Contract between Seller and Purchaser. Time for payment will be of the essence.
- 9.3 All payments payable to the Seller under the Contract will become due immediately upon termination of the Contract despite any other provision.
- 9.4 The Purchaser will make all payments due under the Contract in the invoiced currency without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless otherwise specifically agreed in writing by an authorised representative of the Seller.
- 9.5 In the event of late payment, the Seller reserves the right to claim, and the Purchaser agrees to pay, interest on such amounts on a daily basis at the rate equivalent to 8% over the Bank of England's official lending rate then in force.
- 9.6 The Seller reserves the right to: (a) require pre-payment, (b) refuse to ship until full payment is received, and/or (c) refuse to supply.
- 9.7 The Seller shall be entitled to increase the price to recover any additional costs arising from variation or delay in delivery occasioned by the Purchaser's instructions.

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10. QUALITY

- 10.1 The Seller shall use reasonable endeavours to ensure (subject to the other provisions of these terms and conditions) that upon delivery the Products will conform in all material respects with their specification for 6 months following their delivery.
- 10.2 The Seller will only be liable for a breach of Clause 10.1 if:
- the Purchaser gives written notice of the defect to the Seller (and specifically, if it appears that such defect may be due to damage in transit, to the carrier) within 14 days of the time when the Purchaser discovers or ought to have discovered the defect, such notice to accurately specify the defect and the number of Products affected by the defect;
 - the Seller is given a reasonable opportunity after receiving the notice to examine such Products and, if requested by the Seller, the Purchaser will return such Products to the Seller's place of business at the Seller's cost for examination;
 - the Purchaser does not make any further use of such Products after giving such notice;
 - the defect has not arisen because the Purchaser failed to follow the Seller's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Products or (if there are none) good trade practice; and
 - the Purchaser has not altered, repaired, or destroyed such Products without the written consent of the Seller.
- 10.3 Subject to Clause 10.2, if any of the Products do not conform with their specification in all material respects, the Seller will at its option repair or replace the Products (or the defective part) or refund the price of the Products at the pro rata Contract rate provided that, if the Seller so requests, the Purchaser will, at the Seller's cost, return the Products or the parts of the Products which are defective to the Seller.
- 10.4 If the Seller complies with Clause 10.3, it will have no further liability for a breach of Clause 10.1 in respect of such Products.
- 10.5 Any Products replaced will belong to the Seller and any repaired or replacement Products will be covered by Clause 10.1 for 6 months following their delivery.

11. INTELLECTUAL PROPERTY

- 11.1 Where any specifications and designs for the Products have been supplied by the Purchaser, the Purchaser warrants that the intellectual property rights in such designs and specifications belong to the Purchaser.
- 11.2 The supply of the Products by the Seller shall not be deemed to give to the Purchaser any rights whatsoever in respect of any intellectual property rights owned, used or enjoyed by the Seller in connection with the Products.

12. LIMITATION OF LIABILITY

- 12.1 Nothing in these terms will operate to exclude or limit the liability of the Seller for death or personal injury arising out of its negligence or for its fraud in any way whatsoever.
- 12.2 Subject to Clause 12.1, under no circumstance will the Seller have any liability (whether in contract, tort (including negligence) or otherwise) under or in connection with the Contract for:
- indirect, special or consequential damages or losses of any nature;
 - wasted or lost management time or time of other employees, loss of profits, contracts or business, loss of goodwill or loss of anticipated savings; or
 - any increased costs or expenses.
- 12.3 Subject to Clause 12.1, the Seller's maximum total liability (whether in contract, tort (including negligence) or otherwise) under or in connection with the Contract, will not exceed the total price of the Products supplied to the Purchaser under the Contract.
- 12.4 The express terms of the Contract are in lieu of all warranties, conditions, terms, representations, undertakings and obligations implied by statute, common law, custom, trade usage, course of dealing or otherwise, all of which are excluded to the fullest extent permitted by law.

13. TERMINATION/SUSPENSION

- 13.1 If the Purchaser fails to make any payment on the due date to the Seller under the Contract or any other contract between the Purchaser and the Seller, the Seller will be entitled to suspend any further deliveries to the Purchaser without liability to the Purchaser.
- 13.2 Either party (the "first party") may terminate this Contract with immediate effect by giving written notice to the other (the "second party"), without creating any obligation to pay compensation or damages to the second party and without prejudice to any accrued rights or remedies which the either party may have, if the second party:
- materially breaches any of these terms which is not capable of remedy;
 - materially breaches any of these terms which is capable of remedy but is not remedied within 30 days of receipt of written notice from the first party specifying the breach and requesting remedy; or
 - has a receiver, administrative receiver, administrator or other similar officer appointed over it or over any part of its undertakings or assets or any procedure is commenced or steps taken with a view to the winding up of the second party (other than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or circumstances arise entitling a court of competent jurisdiction to make an order to that effect or if the second party becomes subject to an administration order or enters into a voluntary arrangement with its creditors or ceases or threatens to cease to carry on business or is unable to pay its debts or is deemed by section 123 of the Insolvency Act 1986 to be unable to pay its debts or if the holder of any security over all or substantially all of the assets of the second party takes any step to enforce that security, or if the second party undergoes or is subject to any analogous circumstance, act or proceeding in any jurisdiction.

14. BUYER'S DUTY TO TAKE CARE

- 14.1 The Products, especially chemicals, may be dangerous if not properly used or stored and the appropriate precautions taken. The Purchaser accordingly agrees that it shall take all such steps as are reasonably practicable or usual to eliminate or reduce any such risk to health and/or safety to which use of the Products may give rise.
- 14.2 The Purchaser shall indemnify the Seller against any claim, proceedings, costs, loss, damage or liability as a result of any failure by the Purchaser or any other person in control of the Products, to take such steps or ensure compliance with the duties referred to in Clause 14.1 above or otherwise as a result of the Purchaser's acts or omissions.

15. **ASSIGNMENT** The Purchaser may not assign or otherwise transfer any of its rights or obligations under the Contract or any part of it without the prior written consent of the Seller. The Seller may assign the Contract or any part of it to any person, firm or company.

16. **FORCE MAJEURE** The Seller reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Products ordered by the Purchaser (without liability to the Purchaser) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Seller. The Seller shall not be liable to the Purchaser under, and shall not be in breach of, the Contract to the extent it is prevented from, or delayed in, performing its obligations or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control

17. GENERAL

- 17.1 The Purchaser will comply with all relevant regulatory requirements in connection with the Products, including without limitation those relating to licences, distribution and storage. Further, the Purchaser undertakes to maintain appropriate up-to-date and accurate records to enable the immediate recall of any batches of the Products.
- 17.2 Each right or remedy of the Seller under the Contract is without prejudice to any other right or remedy of the Seller whether under the Contract or not.
- 17.3 The Contract constitutes the entire agreement between the parties relating to its subject-matter. Each party acknowledges that it has not entered into the Contract on the basis of any warranty, representation, statement, agreement or undertaking except those expressly set out in the Contract.
- 17.4 If a party fails to enforce or delays in enforcing an obligation of the other party, or fails to exercise or delays in exercising a right under the Contract, the failure or delay will not affect their right to enforce that obligation or constitute a waiver of that right. Any waiver by a party of any provision of the Contract will not, unless expressly stated to the contrary, constitute a waiver of that provision on a future occasion.
- 17.5 No person who is not a party to the Contract has any right to prevent the variation or cancellation of any provision of the Contract or its termination, and no person who is not a party to the Contract may enforce any benefit conferred upon them by the Contract, unless the Contract expressly provides otherwise.
- 17.6 The Contract and any disputes or claims arising out of or in connection with it will be governed by and construed in accordance with English law. The English Courts will have exclusive jurisdiction to resolve any dispute which has arisen or may arise out of or in connection with the Contract, except that any party may bring proceedings for conservatory or interim relief (including for an interim injunction) in any jurisdiction.
- 17.7 The Purchaser agrees that any personal information provided to the Seller in the commission of the purchase and supply of products may be processed and retained by the Seller. The Seller will only utilise such data as appropriate as part of the normal course of business and in accordance with the provisions of the General Data Protection Regulation 2016/679 and all applicable rules and implementing legislation promulgated in relation thereto.
- 17.8 The Purchaser will notify the Seller in writing of any complaint(s) relating to any Product and howsoever arising by email to complaints@oxfordimmunotec.com within 48 hours of such a complaint arising.

18. NOTICES

- 18.1 Any notice between the parties under the Contract must be in writing and delivered by hand, sent by pre-paid first class post, sent by pre-paid overnight courier service, or sent by facsimile transmission:
- (in case of communications to the Seller) to its registered office or such changed address as shall be notified to the Purchaser by the Seller for the attention of the Company Secretary; or
 - (in the case of communications to the Purchaser) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Purchaser set out in any document which forms part of the Contract or such other address as shall be notified to the Seller by the Purchaser.
- 18.2 Communications shall be deemed to have been received:
- if sent by pre-paid first class post, 3 days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting);
 - if delivered by hand, on the day of delivery;
 - if sent by pre-paid overnight courier service, when delivered if confirmation of delivery is received or 2 days after depositing with the courier service (exclusive of the day of depositing), whichever is earlier; and
 - if sent by facsimile transmission, at the time of transmission if confirmation of successful transmission is received, unless after 4.00 pm on a working day, in which case it shall be deemed received on the next working day.