

TERMS & CONDITIONS OF PURCHASE (GOODS) 2018

1. Definitions

'Seller' means the person who sells or agrees to sell the goods to NU Instruments or performs or agrees to perform services for NU Instruments.

'Conditions' means the terms and conditions set out in this document and any special conditions agreed in writing by NU Instruments.

'Delivery Date' means the date specified by NU Instruments by which the goods are to be delivered or the services are to be performed.

'Goods' means the articles which NU Instruments agrees to buy from the Seller including ancillary services provided by the Seller.

'Order' shall mean the Purchase Order, these Terms and Conditions and all other documents incorporated by the Purchase Order. In the event of conflict between the documents they shall have priority in the order Purchase Order, Terms and Conditions and then each other document in the order stated in the Purchase Order.

'Price' means the price for the Goods including carriage, packing, duty and insurance but excluding VAT.

'NU Instruments' means the buyer NU Instruments.

2. Anti-Corruption

2.1. Seller shall:

- a) comply with all applicable laws, statutes, regulations relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 and not engage in any activity, practice or conduct which would constitute an offence under the Bribery Act 2010 whether or not such activity, practice or conduct is carried out in or outside the UK.
- b) promptly report to NU Instruments any request or demand which if complied with would amount to a breach of either this Agreement.
- c) ensure that any person associated with it who is performing services [or providing goods] in connection with this Agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Seller in this clause.
- d) indemnify, keep indemnified and hold harmless NU Instruments in full and on demand from and against all liabilities (including without limitation any tax liability), direct, indirect and consequential losses, damages, claims, proceedings and legal costs, judgments and costs (including without limitation costs of enforcement) and expenses which NU Instruments incurs or suffers directly or indirectly in any way whatsoever as a result of a breach of this clause.

2.2. Breach of this clause shall be deemed a material breach of this Agreement entitling NU Instruments to terminate this Agreement immediately and following such termination NU Instruments shall not be liable to pay any compensation, costs or any further remuneration, regardless of any activities carried out or agreements with third parties entered into before termination.

3. Agreement

NU Instruments agrees to purchase and receive, and the person, firm, or entity whose name and address is set out overleaf, agrees to sell and deliver the goods and perform the ancillary services (if any) specified in this order, subject to the terms and conditions.

4. Conditions Applicable

The written acceptance of the order or delivery of the goods or the commencement of any work or the performance of any services by the Seller shall be deemed conclusive evidence of the Seller's acceptance of this order and all its terms and conditions. Any conditions or stipulations issued or made by the Seller which are inconsistent with, or which purport to modify or add to these conditions in any way whatsoever shall not have effect unless expressly accepted in writing by NU Instruments.

5. Quality and Fitness for Purpose

Goods supplied under this purchase order shall conform strictly to the specifications, manufacturing instructions or other descriptions given in respect of them, shall be of the prescribed standard of purity and composition and shall be of merchantable quality and fit for the purpose intended (or their usual purpose if no purpose is specified). They shall comply with all applicable UK, and European statutory requirements and standards and such other standards as are specified in the Purchase Order and comply with [NU Instruments Supplier Quality Requirements document SQR-001](#). In ascertaining whether a specific article is required to be fit for any particular purpose, no account shall be taken of the fact that such article is sold under its patent or trade name. All services rendered pursuant to this purchase order shall be of first class quality and goods which any result from services shall comply with paragraph one of this section.

6. Inspection

The seller shall permit inspection and testing of the goods prior to dispatch, but such inspection by or on behalf of NU Instruments shall not relieve the Seller from responsibility or liability, nor in any way imply acceptance of the goods. In addition NU Instruments will, on reasonable request, be given facilities to check manufacturing progress under this order. If NU Instruments is not reasonably satisfied that the goods or their manufacture or processing comply in all material respects with the purchase order, the Seller, without extra cost to NU Instruments, shall take all necessary steps to ensure due compliance.

7. **Packing and Dispatch**

All goods must be securely and properly packaged to prevent deterioration or damage during transit. No charges will be allowed for packing materials or containers unless agreed in writing by NU Instruments. An advice note must be sent when the goods are dispatched and a delivery note must accompany the goods. Both must state the NU Instruments purchase order number, whether the consignment represents the whole or part of the order. A Certificate of Conformity and/or Certificate of Origin, where requested, must accompany the goods.

8. **Delivery**

The goods must be delivered to the locations, in the quantities and at the time stated in the order and in full. The delivery time is of the essence of this contract. Delivery shall be in accordance with DDP at the location stated in the Order, in accordance with ICC Incoterms 2010, unless the Order states otherwise. If the Seller fails to deliver all of the goods in accordance with the contract at the delivery time then without prejudice to the rights of NU Instruments for breach of contract NU Instruments may terminate the contract. In this event, without prejudice to NU Instruments other remedies the Seller shall promptly collect any Goods which have been delivered. The Seller hereby agrees to pay and indemnify NU Instruments against all additional expenses, losses and costs reasonably incurred as a result of the failure to complete delivery at the specified time.

In the event the Seller shall fail to deliver the Goods in accordance with the delivery dates specified in the purchase order, NU Instruments shall have the option of accepting delivery at a later date, in which case the Seller shall be liable to NU Instruments for liquidated damages. Unless different amounts are stated in the Purchase Order, the amounts of such liquidated damages shall be limited to 0.5% of the full Purchase Order value, per day or part of a day of delay, up to a maximum of 15% of the full Purchase Order value. The parties agree that all amounts of such liquidated damages for which the Seller may become liable are a genuine pre- estimate of the losses which may be sustained by NU Instruments in the event of the Seller's failure in his respective obligations under the order and are not a penalty.

9. **Title and Risk**

The title in the goods shall pass to NU Instruments as and when any part of the Goods are identified as being applied to the Order or when the Goods have been paid for by NU Instruments whichever is the earlier. All such goods which remain in the possession of the Seller shall be marked as the property of NU Instruments and kept in a separate area wherever possible, and Seller shall insure the same on an All Risks basis for the full replacement value thereof. Notwithstanding the passing of title, Goods owned by NU Instruments and in the possession of the Seller, shall be at the risk of the Seller and shall be insured on an 'All Risk' basis for the full replacement value until delivery. Where NU Instruments notifies damage or loss in transit the Seller shall take immediate action to repair or replace, free of charge, such goods and due delivery shall not be deemed to have taken place until replacement or repaired goods have been delivered. NU Instruments reserves the right to hold such damaged Goods at the Seller's risk or to return them at the risk and expense of the Seller.

10. **Acceptance and Rejection of the Goods**

NU Instruments shall not be deemed to have accepted any part of the goods until after the Goods have been inspected and it is ascertained that they are in accordance with the contract. NU Instruments may reject Goods which are not in accordance with the contract until a reasonable time after such inspection. Upon such rejection NU Instruments shall, without prejudice to any other rights, be entitled to seek an alternative supply and the Seller agrees to pay any additional expense and costs reasonably incurred as a result of such rejection. NU Instruments may set off against any payment due to the Seller (whether under the contract or otherwise) the additional price of such replacement Goods. Unless within a reasonable time of receipt of notice of rejecting the Goods the Seller collects such Goods NU Instruments will return them to the Seller at the risk and expense of the Seller or, at NU Instruments sole option, dispose of them as the NU Instruments shall think fit (provided that if NU Instruments sells such goods an account will be made to the Seller for the net proceeds of such sale). Any goods inspected and deemed non conforming to specification shall be collected at the Sellers cost within a reasonable period from notification, but not longer than five working days from being notified.

11. **Suspension and Termination**

11.1. NU Instruments shall have the right to suspend performance of the Order at any time. Unless the suspension is caused by any default of Seller, then NU Instruments shall be responsible for any actual and reasonable costs incurred by Seller as a result, and the time for delivery shall be extended to reflect the period of suspension. If the suspension is caused by any default of Seller, then Seller shall not be entitled to any payment or extension of time as a result

11.2. NU Instruments can terminate the Order at any time for its convenience, and shall pay Seller for all Goods delivered in accordance with the Order, or which have been manufactured and are incapable of being sold or re-used, subject to their delivery to NU Instruments if required, together with the actual and reasonable costs of termination, but not for loss of future profit or overhead recovery

11.3. NU Instruments may terminate the Order for default if (a) the Seller becomes insolvent, or is subject to proceedings for liquidation, receivership, administration, or any equivalent process, (b) delivery will inevitably be delayed beyond the date on which the maximum amount of liquidated damages becomes payable, or (c) Seller is in material or persistent default under the Order, and fails to remedy the same within seven (7) days of receiving written notice from NU Instruments (where such default is capable of remedy. In such case, NU Instruments may terminate the Order or any part thereof, and recover any sum paid beyond the value of Goods delivered in

accordance with the Order. Seller shall be responsible for all additional costs incurred in procuring alternative Goods.

12. **Warranty**

The Seller warrants that the Goods supplied shall be new, in accordance with the quality and other standards in Clause 5, of merchantable quality, in accordance with sample (if any), fit for the purpose intended (and, if none is specified, their usual purpose), sold with good and marketable title free of all liens and encumbrances, free from all defects in design (to the extent that design is performed by Seller) and manufacture, and in compliance with all applicable laws.

In the event that any Goods do not comply with this warranty within twelve (12) months of acceptance by NU Instruments (or such other period as may be stated in the Order), Seller agrees to replace or repair the same at its sole expense, and any items repaired or replaced shall be warranted for the balance of the original warranty period or twelve (12) months from completion, whichever is the longer. NU Instruments shall be entitled to assign the benefit of this warranty to the client to whom the Goods are to be supplied.

13. **Payment and Price**

The price of the Goods will be the price of the Order unless otherwise agreed by NU Instruments in writing. Payment will be made 60 days after the end of the month in which the Goods are delivered or a valid invoice is received, whichever is the later. NU Instruments may set off any sums due to the Seller against sums due from the Seller to NU Instruments.

14. **Proprietary Rights**

The Seller warrants that the sale or use of the goods or the supply of the services within the Order, in any part of the world, will not infringe any patent, registered design, trade mark or other proprietary rights of the Seller or any other person and the Seller agrees to indemnify and hold harmless NU Instruments against all actions, judgments, claims, costs and expenses (including legal fees) resulting from actual or alleged infringement of any such rights whatsoever.

15. **Intellectual Property and Disclosure**

Where any specifications or designs of the Goods or any of the Goods have been provided to the Seller, or Seller has developed such specifications, designs or Goods at the request of NU Instruments, the copyright, design right or other intellectual property in them shall become or remain the property of NU Instruments and Seller shall take all reasonable steps to allow NU Instruments to register such rights. All specifications, patterns, drawings, photographs, samples and information provided by NU Instruments to the Seller are strictly confidential and shall remain the exclusive property of NU Instruments. In the case of documents and drawings neither their existence nor their contents shall be communicated to any unauthorised person and the Seller shall return all such items, including any physical or electronic copies made, or, at NU Instruments option, provide evidence that the same have been destroyed or deleted, on demand. No intellectual property of NU Instruments (whether or not registered) shall transfer to Seller as a result of the Order, and Seller's right to use the same shall be restricted to the performance of the Order.

16. **NU INSTRUMENTS Property and Process.**

All patterns, dies, tools, moulds, blocks plates and other materials, equipment, working instructions and process supplied by NU Instruments or supplied by the Seller at NU Instruments expense shall remain or become the property of NU Instruments. The Seller shall maintain all such items in good order and condition, shall clearly mark the items as NU Instruments property and insure the same on an 'All Risks' basis for their full replacement value. The Seller shall not use them or cause them to be used for any other purpose than the supply of Goods to NU Instruments and shall return all such items on demand in the same condition as they were received, fair wear and tear excepted.

17. **Indemnity**

The Seller shall indemnify and hold harmless NU Instruments against all claims, loss and damage which results from the Sellers failure to comply with the terms of the order, or the Seller's performance of the order or the Seller's failure to perform. Seller shall further indemnify and hold harmless NU Instruments against any claim arising from the death of or injury to personnel of the Seller or damage to Seller's property, or for any pollution emanating from the property or equipment of Seller, however caused, including as a result of negligence or breach of duty (whether statutory or otherwise) or strict liability. The Seller shall at all times insure and keep itself adequately insured with a first class insurer against all insurable liabilities under the order and in particular against its liabilities under this paragraph and against the consequences of any act or default of the Sellers employees whilst on NU Instruments property (and ensure that its subcontractors do likewise) in respect of all periods during which any of the Sellers employees or his subcontractors are in the execution of this order.

The insurance arranged under this section shall be for a sum of at least one million pounds (£1,000,000) per incident or the minimum amount required by law, whichever is the greater.

The Seller shall on request, produce the relevant policy and evidence of the current premium. The Seller shall ensure that its insurers waive all rights of recourse against NU Instruments.

18. **Subcontractors and Assignment**

The Seller shall not assign, subcontract or dispose of any of its obligations under the order without the prior written consent of NU Instruments. Notwithstanding any subcontract or assignment of the order the Seller shall remain exclusively responsible to NU Instruments for due performance of the order. NU Instruments shall be entitled to assign or novate the Order to an affiliate or to their client.

19. **Force Majeure**
Neither party shall be liable if performance of this order is prevented by any cause whatsoever beyond that party's control, and which the party concerned could not reasonably have anticipated or provided against, including, without limitation, all forms of government interventions, strikes or lockouts (other than those restricted to the personnel of the Seller), fire, flood, subsidence, sabotage or accident. The party affected by force majeure shall notify the other party promptly, and shall take all reasonable steps to mitigate the effects of such event. If a force majeure event continues for thirty (30) days, NU Instruments shall have the option of cancelling the Order without further liability.
20. **Waiver**
No forbearance, delay, waiver or indulgence by NU Instruments in enforcing its rights under this contract shall prejudice its right to do so in the future, and no waiver shall be effective unless confirmed in writing.
21. **Severance**
Any provision of this contract which is or may be void or unenforceable shall to the extent of such invalidity or unenforceability be deemed severable and shall not affect any other provisions of this contract which will continue to be binding on both parties.
22. **Consequential Loss**
Save as provided in clause 2.1(d) or in relation to liquidated damages, neither party shall be liable to the other for any indirect or consequential losses, howsoever caused. For the purpose of this clause "consequential losses" shall include, but not be limited to, loss of actual or anticipated profit, loss of use, loss of revenue, loss of overhead recovery, loss of product or production or loss of opportunity.
23. **Governing Law and Dispute Resolution**
The terms of this order shall in all respects be construed and have effect according to English Law and the parties agreed to submit to the exclusive jurisdiction of the English Courts.
24. **Third Parties**
No third party has any right to enforce the Order, or to be consulted in respect of any amendment to or termination of the same.

Date of Issue, 11th December 2018