

## CONDITIONS OF SALE

In these terms and conditions (“Conditions”) the following words and expressions shall have the following meanings:

**the Products:** means any item of whatever nature or part thereof or service which is to be sold or supplied by the Seller including any labelling or packaging as described in the order;

**the Buyer:** means the person named in the order who buys or had agreed to buy the Products; and

**the Seller:** means Oxoid AG whose registered office is at Zurlindenstrasse 3, 4133 Pratteln, Switzerland.

### 1. ORDER AND ACCEPTANCE.

- (i) All orders placed by the Buyer shall specify the names of the Products, the quantity required and the preferred delivery date.
- (ii) The Seller contracts for the sale of the Products subject to these Conditions only and any other terms and conditions (including but not limited to those in the Buyer’s order or enquiries) inconsistent with these Conditions shall be of no effect.
- (iii) Any modification to these Conditions will be binding only if it is evidenced in writing signed by the Seller and the Buyer and such evidence contains a specific reference to these Conditions being modified.
- (iv) The Seller shall be entitled in its absolute discretion to accept or reject any order received from the Buyer and from time to time to extend or discontinue the range of Products or any part thereof prior to the acceptance of any order, provided that the Seller shall promptly notify the Buyer of any such acceptance, rejection, extension or discontinuance.

2. QUOTATIONS. The acceptance of any quotation constitutes acceptance of these Conditions except in so far as any of them have been varied expressly within the quotation. Quotations do not constitute an offer, are for information only and not binding until an order has been accepted by the Seller. The Seller reserves the right to revise quoted prices during and subsequent to this process.

### 3. PRICES

- (i) Prices are quoted on an ex-works basis for Swiss trade and FCA to the relevant port in this Country. Unless otherwise stated in writing, the prices estimated or quoted by the Seller are exclusive of freight and VAT. Standard packing will be included in the prices where this is deemed necessary by the Seller. The Seller reserves the right to increase the price from that advised in the acknowledgement of the order, if such increase is due to increased cost of raw materials, labour or transport or any change in government regulations or any other cause beyond the Seller’s reasonable control.
- (ii) Any costs incurred on account of delays, interruptions or suspension of work due to any act or omission of the Buyer shall be added to the price.
- (iii) Minimum order value will not be added.

### 4. DELIVERY

- (i) Delivery shall be deemed to be effected in accordance with the trading incoterms, when the Products have been:
  - (a) Delivered at the address agreed between the Seller and the Buyer, or
  - (b) Delivered to Buyer nominated agent, or
  - (c) Collected from the Seller’s works.

- (ii) Title and risks in relation to the Products will pass to the Buyer upon delivery in accordance with these Conditions unless otherwise agreed in writing by the Seller and the Buyer.

#### 5. FAILURE TO MAKE OR TAKE DELIVERY

- (i) Dates given for despatch and/or delivery are given in good faith and the Seller will use reasonable endeavours to despatch or deliver on such date. Notwithstanding the foregoing, the Seller shall not be liable for late despatch or delivery howsoever caused, nor shall such failure to despatch be deemed to be in breach of contract.
- (ii) If the Buyer or his consignee fail to take delivery of the Products or any part thereof on the dates and at the places agreed then the Seller will be entitled to cancel such delivery and all other outstanding deliveries and to charge the Buyer with any loss suffered (including, without limitation, any re-delivery and storage costs).

#### 6. NOTIFICATIONS

- (i) The Buyer agrees to inspect the Products upon delivery and inform the Seller promptly in writing (and, in any event, within five (5) days of the Seller's invoice for the Products) of any Products which are delivered in a damaged or defective state or of any shortfall in any delivery. Any shortfall in the quantity of Products delivered from that stated in any contract to which these Conditions apply shall not give rise to a right to claim damages for breach of contract solely as a result of such shortfall but the Buyer shall only be obliged to pay at the contract rate for the quantity of the Products delivered.
- (ii) The Seller shall not be liable for loss or damage to the Products which occurs after delivery as defined in Condition 4 above..

7. PACKAGES. Containers in which the Products are delivered are non-returnable unless otherwise described. Containers which are advised as returnable will be charged by the Seller but will be credited in full if returned to Seller, carriage paid and in good condition within 60 days of delivery.

#### 8. DESCRIPTION AND WARRANTIES<sup>1</sup>

- (i) The Seller warrants that the Products delivered to the Buyer shall be of merchantable quality and shall comply in all material respects with the description referred to in the price list, product manual and order form current at the date of order.
- (ii) All samples illustrations, colours, drawings and diagrams contained in the Seller's catalogues, price lists and other advertising matter including the Seller's internet site are of a generally informative nature and approximate only. These are subject to change without notice and none of these shall form part of any contract or give rise to any independent or collateral warranty of whatsoever nature on the part of the Seller.

#### 9. LIMITATION OF LIABILITY

- (i) The Seller's liability in respect of any Product or any late or misdelivery of Products shall be limited, at Seller's option, to replacement of the Products in question or repayment of the price paid by the Buyer for the Products.
  - (ii) Subject to Clause 9 (iii), the Seller shall not be liable to the Buyer for any loss of profit, revenue, goodwill or data or any indirect or consequential loss arising out of or in connection with this Agreement or any breach or non-performance thereof (including by reason of the Seller's negligence).
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- (iii) For the avoidance of doubt, nothing in this agreement shall exclude or restrict the Seller's liability for any fraud, to any person for death or personal injury to that person resulting from the Seller's negligence or in respect of any mandatory liability which may not be excluded or limited under applicable law.
- (iv) Except as otherwise provided in this agreement, all guarantees, undertakings, conditions, terms or warranties, express or implied, in tort or in contract, statutory or otherwise in relation to the Products are hereby expressly excluded to the extent so permitted by law.

10. INDEMNITY. The Buyer shall (and shall ensure that any third party to whom any Products may subsequently be supplied) comply with all instructions and recommendations of the Seller in relation to the installation, storage, supply, maintenance and use of the Products, and, except to the extent any of these are caused by the negligence of the Seller, the Buyer shall keep the Seller fully and effectually indemnified against all costs, claims, demands, expenses and liabilities of whatsoever nature and wheresoever arising which may be made against the Seller or which the Seller may sustain, pay or incur arising out of or in connection with the Buyer's failure so to comply and/or to ensure that any third party to whom any Products have subsequently been supplied so complies.

11. FORCE MAJEURE. If by reason of fire, accidents, war, strikes, lockouts, riots, civil commotion, Government prohibition or any other cause (whether or not of the same nature as the foregoing) beyond the reasonable control of either of the parties the Seller is prevented from or delayed or hindered in effecting despatch or making delivery of the Products or any part thereof at the times or places stated for delivery then a reasonable extension of time shall be granted or, if appropriate, delivery abandoned without penalty. In any event the Seller shall not be liable in any way for loss or damage arising directly or indirectly through or in consequence of any such events or happenings.

#### 12. PAYMENT

- (i) Terms of payment for deliveries are net cash within 30 days of the date of invoice, unless otherwise expressly agreed in writing to the contrary.
- (ii) The right is reserved (without prejudice to any other remedy) to cancel any uncompleted order or to suspend delivery in the event of any of the Buyer's commitments not being met, or if the Seller is of the opinion that the Buyer is not in a position to meet such commitments.
- (iii) The Seller reserves the right to levy an interest charge of 3% above Swiss National Bank base rate per month for any account remaining unpaid after 15 days from the date payment is due hereunder.

13. DEFAULT. Should default be made by the Buyer in paying any sum due under any contract as and when it becomes due or if the Buyer should commit an act of bankruptcy or enter into liquidation or if a Receiver of the Buyer's assets be appointed or any arrangement or composition be made with creditors then Seller may at its sole discretion without notice in writing suspend or terminate any contract then in being so far as any further Products remain to be delivered without prejudice to any claim or right the Seller may otherwise make or exercise.

14. SOFTWARE PRODUCTS. Please refer to specific Terms and Conditions for Software Products, available from Oxoid's marketing department.

## 15. INTELLECTUAL PROPERTY RIGHTS

- (i) The Buyer shall leave in position and not cover, deface or erase any notices or other marks (including without limitation serial numbers and notices that a trade mark, design, patent or copyright relating to the Products is owned by the Seller or a third party) which the Seller may place on or affix to the Products.
- (ii) The Buyer shall not use any trade mark of the Seller on its note paper or in any other way other than in relation to the Products in respect of which the Buyer has used such trade mark. In particular, but without limitation, the Buyer shall not in any of its stationery nor by any sign at its premises or otherwise indicate that it is in any way connected with the Seller other than (if such be the case) that it is an authorised distributor of the Products.
- (iii) The Buyer acknowledges that all intellectual property rights in the Products do and shall continue to belong to the Seller and the Buyer agrees that it will not infringe any of the Seller's intellectual property rights. In addition, the Buyer agrees to notify the Seller as soon as it becomes aware of any third party infringement of the Seller's intellectual property rights, or any infringement by the Seller or any of the Products of any third party intellectual property rights. The Seller shall be at liberty with the Buyer's assistance, if required, but at the Seller's expense to conduct all negotiations in the Buyer's name for the settlement of the same or any litigation which may arise therefrom. Subject to proper notification and provided that no Products or any part thereof shall be used for any purpose other than that for which the Seller shall supply them, the Seller will indemnify the Buyer in respect of any sum the Buyer may be lawfully required to pay or pay with the Seller's consent to any third party claimant, but the indemnity shall not extend so as to entitle the Buyer to recover from the Seller any sum exceeding the total contract price for such Products.
- (iv) Where Products are at the Buyer's request made and supplied by the Seller other than to the Seller's own specification, the Seller accepts no liability for infringement or alleged infringement of any intellectual property rights in respect thereof and the Buyer will indemnify the Seller against any such claims.
- (v) So far as it concerns Products supplied other than of the Seller's own manufacture, the Buyer will be entitled only to such indemnity in respect of infringement or alleged infringement of intellectual property rights as the Seller may obtain from the Seller's supplier and provided that the Seller is not called upon to bear any liability or expense greater than the amount recovered from the Seller's supplier.
- (vi) The Buyer shall do nothing which would or might vitiate any policy of insurance or insurance cover which the Buyer may have in relation to such infringement, and this indemnity shall not apply to the extent that the Buyer recovers any sums under such policy or cover (which the Buyer shall use its best endeavours to do).
- (vii) Without prejudice to any duty of the Buyer at common law, the Seller shall be entitled to require the Buyer to take such steps as the Seller may reasonably require to mitigate or reduce any such loss, damages, costs or expenses for which the Seller is liable to indemnify the Buyer under this clause.

16. CANCELLATION. Defects in quality or quantity of any of the Products delivered shall not be a ground for cancellation of the remainder of any order for the Products.

17. SEVERABILITY. Except in so far as the context otherwise requires, each provision herein shall be construed as independent of every other provision, and if any provision hereof is or becomes partially or totally invalid or unenforceable then the validity and enforceability of the remaining provisions shall not be affected.

18. ENTIRE AGREEMENT. These Conditions constitute the whole agreement and understanding between the parties and supersede all prior discussions and agreements (whether oral or written) between the parties and/or their agents or advisers, relating to the subject matter of these Conditions.

19. WAIVER. A failure by either party to exercise or enforce any right conferred upon it by these Conditions shall not be deemed to be a waiver of such right or operate so as to bar the exercise or enforcement thereof at any subsequent time or times.

20. NOTICES

- (i) Any notice to be given under these Conditions shall be given by delivering the same personally or by sending the same by registered post or by facsimile transmission to the address of the other party set out in these Conditions or to such other address as may be notified by that other for this purpose to the party seeking to give such notice.
- (ii) Any notice given pursuant to Condition 21 (i) shall be deemed when sent by registered post (and in the absence of evidence of earlier receipt) to be delivered 3 days after despatch and shall be deemed when sent by facsimile transmission to be delivered on the day of transmission provided that the party giving notice proves that the registered envelope containing the notice was correctly addressed or proves the date, time and correct number of the facsimile transmission.

21. CONFIDENTIALITY. The Buyer shall at all times use its best endeavours to keep any confidential information relating to the Products or to the Seller's business confidential, whether such information is disclosed to it by the Seller or whether it comes to the Buyer's knowledge by other means and whether or not it is expressly stated to be confidential or marked as such, and not to disclose it to any other person and shall not use any such confidential information for any purpose other than the performance of its obligations under these Conditions provided that this restriction shall not extend to any confidential information which:

- (i) The Buyer is required to disclose to any governmental or other authority or regulatory body;
- (ii) Is at the date of the order to which these Conditions apply, or becomes thereafter, public knowledge through no fault of the Buyer, or can be shown by the Buyer, to the reasonable satisfaction of the Seller, to have been known to the Buyer prior to its being disclosed to the Buyer by the Seller.

22. OTHER PROVISIONS. Nothing in these Conditions shall be taken to constitute a partnership or the relationship of employer and employee between the parties hereto.

23. LAW. These conditions and any contract to which these Conditions apply (and these Conditions) shall be governed by and construed in accordance with the Swiss laws and the Seller and the Buyer submit to the non-exclusive jurisdiction of the Courts of Canton Baselland.