

Warranty and Terms and Conditions of Sale

1. **Applicability.** These terms and conditions (the "Conditions") shall govern the sale of products ("Products") and/or the provision of services ("Services") by either Prior Scientific Instruments Ltd., a company registered in England and Wales, whose registered address is 3-4 Fielding Industrial Estate, Wilbraham Road, Fulbourn, Cambridge, CB21 5ET, United Kingdom ("Prior UK") or Prior Scientific, Inc., a Massachusetts corporation whose registered address is 80 Reservoir Park Drive, Rockland, MA 02370, U.S.A. ("Prior US"), as identified in the applicable Order (the applicable entity identified in the applicable Order shall be referred to hereinafter as "Prior") to the entity placing an order for Products or Services with Prior ("the Customer"). Orders shipped from the Prior Scientific offices in Germany, Japan, and China will abide by the Warranty and Terms and Conditions of Sale for the appropriate office.

These Conditions shall also apply to all future transactions with Customer, without the necessity of a separate agreement (including these Conditions) being entered into by and between Prior and Customer with respect to the Products and/or Services until such time as these Conditions may be amended by Prior.

2. **Orders.** All orders placed by Customer for Products or Services ("Orders") are subject to acceptance by Prior. All Orders must include delivery dates, quantities and complete description of the Services and/or Products being purchased. Orders from Customer shall only become binding on Prior upon Prior's written acceptance thereof.

Customer is responsible for the accuracy of their Orders and specifications and for supplying any relevant information within sufficient time to enable Prior to deliver the Products or Services in a timely manner.

Prior reserves the right to make changes to the specifications of any Product and/or Service supplied which are required to conform with any applicable safety or statutory requirements.

Prior reserves the right to designate certain Products as non-cancellable, non-returnable ("NCNR") or customer specific ("CS") Products and the sale of such Products shall be subject to the special terms and conditions contained in Prior's Special Product Agreement, or substantially similar agreement, which shall prevail and supersede any inconsistent terms and conditions contained herein or elsewhere.

3. **Prices.** Any price quoted is for the stipulated quantities and delivery dates only and does not necessarily apply to other quantities or other delivery dates.

Price quotations, unless otherwise stated on the quotation, shall automatically expire thirty (30) calendar days from the date issued and may be cancelled or amended by Prior within that period upon notice to Customer.

Pricing for undelivered Product may be increased in the event of any increase in Prior's cost, change in market conditions or any other causes beyond Prior's reasonable control.

Prior reserves the right to increase prices in cases where modifications requested by Customer give rise to additional costs to Prior.

Unless otherwise agreed in writing by Prior, all prices quoted are exclusive of transportation, , non-standard packaging, extra costs incurred due to the method of transport selected by Customer, installation, handling, storage and insurance costs, duties, and all taxes including, but not limited to, federal, state, provincial and local taxes, excise, value added, goods and services taxes and any other taxes, all of which shall be the responsibility of Customer and which may appear as separate items on Prior's invoice.

Customer shall not be required to pay such taxes in the event that they have provided Prior with an exemption resale certificate in the appropriate form for the jurisdiction of Customer's place of business and any jurisdiction to which Products are to be directly shipped hereunder, or in the event the sale of Products is otherwise exempt from these taxes. Customer agrees to indemnify and hold Prior harmless for any liability for tax in connection with such sale, as well as the collection or withholding thereof, including penalties and interest thereon.

4. **Payment.** Full payment is due promptly upon placing an Order on Prior's website. For all other Orders, upon approval of credit, Prior's standard terms of payment are net thirty (30) days from the date of invoice, unless otherwise specified in writing by Prior.

Special Orders for Products pursuant to Customer specifications may be subject to payment of fifty percent (50%) of the quoted price at time of Prior's acceptance of such Order.

A late charge of one and one-half percent (1.5%) per month or the maximum rate permitted by applicable law, whichever is less, will be imposed on all past due amounts. Customer shall be liable for Prior's costs of collection, including reasonable attorneys' fees and court costs, in any action to collect past due amounts.

Prior reserves the right to establish and/or change credit and payment terms extended to Customer when, in Prior's good faith opinion, Customer's financial condition or previous payment record warrants such action. Furthermore, on delinquent accounts, Prior shall not be obligated to continue performance under any agreement with Customer.

If Prior believes in good faith that Customer's ability to make payments may be impaired or if Customer shall fail to pay any invoice when due, Prior may suspend delivery of any Order or any remaining balance thereof until such payment is

made or cancel any order or any remaining balance thereof. Customer shall remain liable to pay for any Products already shipped and all NCNR and CS Products ordered by Customer.

5. **Delivery.** All deliveries will be made from Prior's facility on FCA or DAP terms as defined by the latest version of Incoterms for Prior UK, or FOB terms for Prior Scientific Inc. Carriers shall not be deemed agents of Prior for shipments on FCA Terms.

Subject to Prior's right of stoppage in transit, delivery of Products to the Customer's nominated carrier shall constitute delivery to Customer and title and risk of loss shall thereupon pass to Customer. Selection of the carrier and delivery route shall be made by Prior unless specified by Customer on FCA Terms. Customer acknowledges that delivery dates provided by Prior are estimates only, and Prior shall not be liable for delays in delivery or for failure to perform due to causes beyond the reasonable control of Prior.

In the event of delay caused by such event, the date of delivery shall be extended for a period equal to the time lost as a consequence of the delay in delivery without subjecting Prior to any liability or penalty.

Delivery of a quantity that varies from the quantity specified, shall not relieve Customer of the obligation to accept delivery and pay for the Products so delivered. Delay in delivery of one instalment shall not entitle Customer to cancel other instalments.

Customer acknowledges that representations as to deadlines for delivery of Products or Services are estimates only, unless Prior has given an express binding commitment in writing and not before all technical issues and details relating to the Order have been resolved.

Deadlines shall not apply if Customer is in default with the fulfilment of its duties, in particular, with regard to the provision of materials, documents, information, data, exemptions or permits that are required to be provided by Customer, or with regard to such other information that Prior may reasonably require to perform, or with regard to any payment which must be made for the delivery of any Product or Service or any previous delivery of Products or Services or with regard to any other monies due.

Customer shall be solely responsible for the procurement of relevant approvals and permits for the import and export of Products.

6. **Title.** Upon acceptance by Prior of an Order, Customer shall be considered to have granted to Prior a security interest in all Products delivered to secure the payment of invoiced amounts due therefore.

Customer agrees to execute and deliver to Prior, upon request, UCC financing statements and other documents reasonably requested by Prior to perfect its security interest in the Products.

7. **Changes to Orders, Cancellations and Reschedules.** Orders placed by Customer may not be changed, cancelled or rescheduled without Prior's written consent. Requests to change, cancel or reschedule orders must be made in writing by Customer to Prior. Prior is under no obligation to accept such changes, cancellations or rescheduling.

Without prejudice, Prior reserves the right to invoice Customer to recover all losses, costs and damages sustained directly or indirectly due to such change, cancellation or rescheduling.

8. **Inspection.** All Products shall be examined by Customer upon receipt by Customer. If Products are damaged upon receipt or do not conform to agreed specifications, Products shall not be moved from point of delivery, and a written claim must be filed with Prior within five (5) days of date of delivery.

On discovery of any alleged defect not reasonably discoverable within said five (5) day period Customer must file a written claim with Prior five (5) days after Customer learns of such alleged defect provided that in no event may Prior be liable for any such alleged defect ninety (90) days after delivery, unless a longer period is required by applicable law.

Failure of Customer to give notice of any claim within the applicable period shall be deemed an absolute and unconditional waiver of such claim, irrespective of whether the facts giving rise to such claims shall have been discovered.

Upon receipt of a written claim for damaged or nonconforming Products, Prior will notify Customer in writing if Products are to be returned, or if Products will be repaired or if a credit will be issued. Whether Products are returned or repaired or whether a credit is issued, is within Prior's full and complete discretion, subject to the limited warranty set forth below, and shall be Customer's sole remedy at law or equity.

9. **Limited Warranty.** Prior warrants that for the period of time listed below (unless a longer period is required by applicable law) under "Warranty by Product" following the date of delivery of Products to Customer, said Products shall conform to the specifications drawings or other written descriptions contained in the Order and shall be free from defects in material and workmanship.

Warranty by Product:

Motorized Stage – Warranty is five (5) years from date of purchase. The warranty is valid only when used with a Prior controller. For usage with a non-Prior controller, the Motorized Stage warranty is 1 year and does not include motors.

Prior Controller, Controller System, Interactive Control Centre/Joystick, Focus Drive or Filter Wheel – Warranty is three (3) years from the date of purchase only when used with Prior components or with a Prior controller.

Shutter – Warranty is one (1) year from the date of purchase excluding the coil which is not covered by the warranty.

OEM and Custom Built Products (products not in Prior's published price lists and/or products that are sold to Original Equipment Manufacturers) – Warranty is one (1) year from date of purchase.

Queensgate Branded Products – Warranty is two (2) years from date of purchase.

All other Products – Warranty is (1) year from date of purchase for any Product not explicitly specified above.

Customer's sole remedy and Prior's exclusive liability for a breach of this limited warranty shall be, at Prior's option, the repair or replacement of the nonconforming Product or component thereof.

This limited warranty applies to the Customer only and may not be acted upon by any subsequent purchaser.

This limited warranty does not cover normal wear and tear.

A repair, replacement or modification of a Product under this limited warranty will not extend the period of said warranty. Products, or components thereof, manufactured by third parties, including but not limited to electro-mechanical shutters, are warrantied only to the extent of such manufacturer's warranty to Prior. Furthermore, this warranty is subject to, and shall be applicable only if all the following conditions are met:

- a. Prior's instructions as to installation, operation and maintenance have been followed;
- b. The Products and components thereof have been used under normal operation conditions or under such conditions specified by Customer and agreed to in writing by Prior;
- c. The Products and components thereof have been properly erected, installed operated and maintained and have not been affected by misuse, neglect, modification, alteration or accident;
- d. Customer has not attempted or performed corrective work or change on the Products and/or components thereof without Prior's prior written consent as to the nature and expense thereof;
- e. Within this warranty period and after prior authorization from Prior, the Products and/or components thereof are shipped at Customer's expense and risk to a Prior facility; and
- f. Prior must have received the Product and/or components thereof within thirty (30) days of Customer first discovering the defect.

10. **Disclaimer of All Other Warranties.** THE ABOVE LIMITED WARRANTY IS IN LIEU OF ANY OTHER WARRANTY, WHETHER EXPRESS OR IMPLIED, WRITTEN OR ORAL (INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NONINFRINGEMENT) EACH OF WHICH ARE EXPRESSLY HEREIN DISCLAIMED.

11. **Limitation of Liability.** IN NO EVENT SHALL PRIOR BE LIABLE TO CUSTOMER FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE, OR OTHER INDIRECT DAMAGES, OR FOR LOSS OF PROFITS, LOSS OF DATA OR LOSS OF USE DAMAGES, ARISING OUT OF THE MANUFACTURE, SALE, SUPPLYING OR FAILURE OR DELAY IN SUPPLYING OF THE PRODUCTS OR THE SERVICES RELATED THERETO, WHETHER BASED UPON WARRANTY, CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE. IF FOR ANY REASON ANY OF THE FOREGOING PROVISIONS SHALL BE INEFFECTIVE, PRIOR'S LIABILITY SHALL NOT IN ANY EVENT EXCEED THE FULL PURCHASE PRICE OF SUCH PRODUCTS AND COMPONENTS THEREOF, AND/OR THE SERVICES.

EXCEPT AS MAY ARISE OUT OF PRIOR'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, THE TOTAL LIABILITY OF PRIOR TO CUSTOMER FOR ANY AND ALL CLAIMS AND DAMAGES UNDER THIS AGREEMENT, WHETHER ARISING BY STATUTE, CONTRACT TORT OR OTHERWISE, WILL NOT EXCEED THE AMOUNTS PAID BY (AND NOT OTHERWISE REFUNDED TO) CUSTOMER TO PRIOR UNDER ANY ORDER FOR THE SERVICES/PRODUCTS WHICH FORM THE SUBJECT OF THE CLAIM IN THE TWELVE MONTH PERIOD PRECEDING THE EVENT WHICH GAVE RISE TO THE CLAIM.

12. **Termination.** If Customer defaults in the payment of any sum due to Prior or commits any other breach of any of the terms or conditions herein or if there is a material change in the ownership or financial conditions of Customer which is reasonably considered unsatisfactory to Prior, then Prior may, without prejudice to any other rights which may have accrued or which may accrue to it, whether at law or equity, refuse to accept any Order and may terminate any Order immediately without liability to Prior.

13. **Confidential Information.** Customer agrees to treat the Products and Services supplied by Prior, related documentation, specifications, drawings, tools, fixtures, materials, equipment and other items furnished by Prior, any other papers accompanying purchase orders, and the cost that is charged for any Orders as the confidential information ("Confidential Information") of Prior. Customer shall not disclose such Confidential Information other than to its employees and agents who need to know such information and who are informed of the confidential nature of such information. In addition, Customer agrees not to incorporate or permit its affiliates to incorporate any features of design or construction peculiar to the Products or Services supplied by Prior into any other product. The sale of Products or the performance of Services by Prior to Customer shall not be construed as a license of any trade secret right, trademark, patent or copyright.

14. **Patents.** Customer agrees to defend, indemnify and hold Prior and its distributors and dealers in, and users of the Products or Services of Prior harmless against any and all losses, damages or liabilities arising out of any demand, claim, action, litigation or judgment (each, a "Claim") involving infringement or alleged infringement of the U.S. and/or foreign patent by any Product or Service furnished hereunder. Patent rights to all improvements embodied in Products, Services,

designs, tools, patterns, drawings, information and equipment supplied by Prior under any Order and exclusive rights for the use and reproduction thereof are reserved by Prior.

15. **Data Privacy Protection.** Prior shall treat all personal data relating to Customer in accordance with the Prior privacy policy published on Prior's website. By placing orders, Customer consents to the storage and forwarding of personal data by Prior for the purpose of credit review, collection of debts and notifications under any applicable laws and regulations.

16. **Disposal Obligations.** Customer shall be solely responsible for the proper disposal of discarded Products considered hazardous material or waste electrical or electronic equipment, and any fees and other costs associated with such disposal, in accordance with any applicable statute, regulation or order.

Upon accepting delivery of such Products, Customer agrees to hold harmless, release, and indemnify Prior from any and all claims or demands by third parties or authorities in anyway resulting from or arising out of the proper treatment and disposal of such Products.

17. **Indemnification.** Customer will indemnify, defend and hold harmless (including paying reasonable attorneys' fees) Prior and its employees, agents and permitted assigns against all liability to third parties that:

(1) arises from Customer's negligence, gross negligence or wilful, wrongful, wanton or reckless conduct that results in death or bodily injury or damage to real or tangible personal property;

or

(2) arises from or in connection with Customer's use or resale of any Product or Service furnished under this Agreement.

18. **Force Majeure.** Prior shall not be responsible for failure or delay in performance that is the result of events of force majeure, including all revisions of statutory law, acts of governmental authority or any agency or commission thereof, war, fire, flood, accidents, pandemics, endemics, acts of God, terrorism, embargoes, acts of third parties, breakdown of equipment, shortages of material, labour or power, labour strikes, work stoppage or labour unrest, or any other cause beyond Prior's reasonable control that renders the performance substantially more difficult or impossible.

Prior shall have no obligation to deliver any Products or provide any Services unless and until it has received any necessary licenses or authorizations or is qualified for general licenses or license exceptions under applicable import/export laws, regulations, orders and requirements.

In the event that for any reason any such licenses or authorizations are denied or revoked, or a change in any such applicable laws, regulations, orders or requirements occurs thereby prohibiting Prior from performing, or otherwise exposing Prior and/or its affiliates to a risk of liability under applicable laws, regulations, orders or requirements, Prior shall be relieved without liability of all obligations hereunder or under any Order.

If any of the foregoing events occurs, Prior may make deliveries of the Products and Services proportionate to production and/or postpone the shipment or delivery period of the Products and Services to a reasonable time after the difficulty has ceased, or Prior may, at Prior's option upon due notice given to Customer after the commencement of any such event, declare the Order terminated and all rights and liabilities of Prior and Customer, except with respect to Products and Services previously shipped or performed or in Prior's inventory, shall cease and terminate. In no event shall Prior be liable to Customer for compensation or damages. If Prior is prevented for any reason whatsoever from fulfilling an Order, Prior may, at its opinion cancel or suspend that Order without incurring any liability to Customer for any loss arising from the cancellation or suspension. Where delivery is by instalments, each delivery will be considered as a separate Order, and failure of any delivery shall not vitiate the order as to others.

19. **Miscellaneous.**

- a. To the extent there is a conflict between these Conditions and Customer's purchase order, these Conditions shall be controlling paramount
- b. Where the Order is with Prior US, these Conditions as it applies to such Order shall be construed in accordance with and governed by the laws of the Commonwealth of Massachusetts, excluding its choice-of-law principles. Where the Order is with Prior UK, these Conditions as it applies to such Order shall be construed in accordance with and governed by the laws of the United Kingdom of Great Britain and Northern Ireland.
- c. If any provision hereof is determined to be invalid or unenforceable under applicable law, such provision shall be ineffective to the extent of such invalidity or unenforceability, and the statutory provision shall apply instead. Under no circumstances shall the provision in question be replaced by Customer's terms and conditions, if any.
- d. Notices and other communications hereby required or contemplated shall only be effective if delivered in writing to the other party at its principal place of business (and where necessary under these Conditions, accepted by the receiving party), either by (a) personal delivery, (b) postage prepaid, return receipt requested, registered or certified mail, or, (c) internationally recognized overnight courier (such as DHL, FedEx, or UPS). Notice by registered or certified mail shall be effective on the date officially recorded as delivered to the intended recipient by return receipt or equivalent, and in the absence of such record of

- delivery, the effective date shall be presumed to have been the fifth (5th) business day after deposit in the mail. Notices delivered in person or sent by courier shall be effective on the date of personal delivery.
- e. The headings herein do not form part of these Conditions and shall not be taken into account in their interpretation.
 - f. PRIOR AND CUSTOMER IRREVOCABLY WAIVE ALL RIGHTS TO A TRIAL BY JURY IN ANY PROCEEDING HEREAFTER INSTITUTED BY OR AGAINST PRIOR OR CUSTOMER IN RESPECT TO THE CONDITIONS.
 - g. No amendment, deletion, supplement or change in these Conditions shall be binding upon Prior unless separately and specifically approved in writing and signed by a duly-authorized officer of Prior.
 - h. The Conditions shall apply to the exclusion of all other terms and conditions and constitute the entire agreement between the parties regarding the subject matter hereof.
 - i. These Conditions shall be binding upon and for the benefit of the parties and their permitted successors and assigns. Either party may assign These Conditions in whole as part of a corporate reorganization, consolidation, merger, or sale of substantially all of its assets.