

## **ALCON EYE CARE UK LIMITED GENERAL CONDITIONS OF SALE (“conditions”)**

### **1. GENERAL**

- 1.1 Unless otherwise agreed in writing with a statutory director of Alcon Eye Care UK Limited (“Alcon”) these conditions shall apply to all requests and orders for the sale by Alcon in the United Kingdom and the Republic of Ireland (including the Channel Islands and the Isle of Man) of all medicinal, medical device and accompanying products offered for sale by Alcon in the United Kingdom and the Republic of Ireland. A buyer is any person, firm, company or other legal entity which places an electronic or other order with Alcon for Alcon products no matter what or where may be the ultimate destination of that product.
- 1.2 All Alcon products marketed by Alcon are sold subject to these conditions, which shall be the sole terms and conditions of any sale of Alcon products unless Alcon states otherwise. These conditions will prevail at all times over any terms and conditions that the buyer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. The placing of an order for, or the acceptance of, Alcon products by the buyer shall indicate unqualified acceptance of these conditions. All sales of Alcon products are made pursuant to these conditions which together with the order form a contract between Alcon and the buyer for the sale and purchase of Alcon products (“Contract”). The Contract constitutes the entire agreement between the parties. The buyer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of Alcon which is not set out in the Contract.
- 1.3 All electronic or other orders are accepted and Alcon products are supplied only on the condition that the buyer is authorised to deal in and re-sell Alcon products in the EEA and Switzerland and will not actively sell any Alcon product outside the EEA and Switzerland. For the avoidance of doubt, in the event of a breach of this clause 1.3, Alcon shall be entitled to terminate the Contract and seek appropriate damages.
- 1.4 To comply with its obligations as holder of a wholesale dealer licence, or a manufacturer's licence, or as distributor and supplier of medicinal and medical device products to the National Health Service or to others, or to comply with its obligations as employer of employees who provide services and support to customers of Alcon, Alcon reserves the right at any time to audit any site from where an order has been issued or where Alcon products are to be stored, delivered or otherwise handled, prior to considering an order that it has received. The scope of such audit may include all records and permits, licences or other data relating to a buyer or to the Alcon products or of other products of a buyer.
- 1.5 In the event of shortages or anticipated shortages of Alcon products, Alcon shall be entitled at its discretion as a supplier of Alcon products, or otherwise at its discretion to be promptly provided with a copy of any information that is relevant to the order, including copies of anonymised prescriptions, licences and permits that the buyer may hold, copies of contracts that a buyer may have signed with its own customers (all price information redacted), anonymised sales data and of any other documents or data that Alcon considers necessary for Alcon to determine whether any order may be considered or partly or fully accepted. In providing such information and data the buyer must take all steps to comply with applicable laws, professional conduct obligations and with best practice.
- 1.6 Alcon will work with the buyer to plan future ordering based on the buyer's previous usage levels, in order to ensure the buyer's stock of Alcon products is appropriate for their requirements. The minimum order value and minimum order quantity per order of Alcon products that may be placed with Alcon may be confirmed by Alcon before or after receipt of an order. Alcon products shall, unless otherwise agreed in writing with the buyer, be delivered with a minimum of six (6) months' unexpired shelf life at the time of delivery to the buyer, and in accordance with Alcon's standard selling unit.
- 1.7 Subject to availability of Alcon products, and to Alcon's right to reject or vary orders, or to cease supply of Alcon products by notice, orders processed by Alcon shall be legally binding upon the buyer and the buyer shall be liable to pay for Alcon products as documented in Alcon's invoice to the buyer. Alcon will not accept any cancellations of orders that have been processed by Alcon.
- 1.8 Alcon reserves the right at any time at its sole discretion to reject orders upon or after receipt and not to process orders after receipt. Alcon may also at its discretion give not less than 30 days' notice in writing to the buyer that Alcon shall no longer supply them with any Alcon products (and during such period of notice Alcon may supply such Alcon products for orders which it has processed in accordance with the conditions). Alcon may vary these conditions at any time by giving not less than 30 days' notice.
- 1.9 Alcon products shall be delivered to the address stated in the Contract, or such other address as agreed by the parties in writing, and the signature at such address, of an employee or agent or other person purporting to act on behalf of the buyer, on Alcon's or its nominees' delivery note, shall be conclusive proof of delivery of Alcon products in accordance with the Contract.

- 1.10 In these conditions the words and phrases "other", "including" and "in particular" shall not limit the generality of any preceding words or be construed as being limited to the same class as the preceding words where a wider construction is possible.
- 2. DELIVERY, TITLE AND RISK**
- 2.1 Alcon will deliver the order to the buyer FCA. A delivery charge payable by the buyer may be levied on orders, of an amount determined by Alcon at the point of processing of an order. All times, dates or periods given for the delivery of Alcon products are estimates only and time shall not be of the essence. Alcon shall use commercially reasonable endeavours to supply by agreed delivery dates but shall not be liable for any delay in delivery that is caused by an Event of Force Majeure or the buyer's failure to provide Alcon with adequate delivery instructions or any other instructions that are relevant to the delivery of the products. Delivery may take place by way of instalments in such quantities as Alcon may reasonably decide. Each instalment shall constitute a separate Contract and no breach in respect of one or more of them shall entitle the buyer to cancel any subsequent instalment or repudiate the Contract as a whole. If the buyer fails to accept delivery of the Alcon products within three business days of Alcon notifying the Buyer that the Alcon products are ready, then, except where such failure or delay is caused by an Event of Force Majeure or Alcon's failure to comply with its obligations under the Contract: (a) delivery of the Alcon products shall be deemed to have been completed at 9.00 am on the third business day after the day on which Alcon notified the buyer that the Alcon products were ready; and (b) Alcon shall store the Alcon products until delivery takes place, and charge the buyer for all related costs and expenses (including insurance).
- 2.2 The risk in the Alcon products shall pass to the buyer on completion of delivery. Title and ownership in the Alcon products shall pass to the buyer on receipt by Alcon in full of:
- 2.2.1 the price (and VAT) for those Alcon products; and
  - 2.2.2 all other sums due from the buyer under the Contract; and
  - 2.2.3 all sums due from the buyer under any other contracts, agreements or arrangements between the buyer and Alcon.
- 2.3 Until such time as title and ownership in Alcon products passes to the buyer, the buyer agrees to:
- 2.3.1 hold the Alcon products as Alcon's fiduciary agent and bailee and to keep such Alcon products separate from those of the buyer and third parties and properly stored, protected and insured and identified as Alcon's property and not mix them with any other goods;
  - 2.3.2 not pledge or allow any encumbrance, lien, charge or other interest to arise or be created over the Alcon products;
  - 2.3.3 not dispose of or deal with the Alcon products or any documents of title relating to them or any interest in them, except that the buyer may without prejudice to clause 2.2 on its own account sell the Alcon products in the ordinary course of its business; and
  - 2.3.4 notify Alcon immediately if it becomes subject to any of the events listed in clause 2.7.
- 2.4 Alcon shall have an action for the price of the Alcon products notwithstanding that title in the Alcon products has not passed.
- 2.5 The buyer irrevocably authorises and grants Alcon its servants or agents an irrevocable licence to enter the buyer's premises or any other premises over which the buyer has control or access in order to recover, take possession and/or to resell all Alcon products for which the buyer has not made payments of the invoice price which may be due to Alcon or which Alcon retains ownership. The buyer shall take all reasonable steps to help Alcon recover the Alcon products. Demand for, or recovery of, the Alcon products shall not of itself discharge the buyer's liability to pay the whole of the price or any other rights of Alcon.
- 2.6 If any sums owing to Alcon are overdue, Alcon, its servants or agents shall be authorised by the licence granted by the buyer under clause 2.5, to enter the buyer's premises to recover, take possession and to resell all Alcon products in which title has not passed to the buyer. A buyer shall not purport to set off or withhold any payment claimed or due from Alcon under any contract.
- 2.7 If a buyer fails to make any payment to Alcon when due, compounds with its creditors, executes an assignment for the benefit of its creditors, has a bankruptcy order made against it or being a company, enters into voluntary or compulsory liquidation or has an administrator or administrative receiver or receiver appointed over all or part of its assets or takes or suffers any similar action in consequence of debt or becomes insolvent or if Alcon has reasonable cause to believe that any of these events is likely to occur:
- 2.7.1 the buyer irrevocably authorises and grants Alcon its servant or agents an irrevocable licence to enter without prior notice any premises where Alcon products are stored, and to re-possess and dispose of any Alcon products that are in the possession of the buyer;
  - 2.7.2 the buyer's right to sell or otherwise dispose of Alcon products shall terminate immediately;
  - 2.7.3 Alcon shall have the right to withhold delivery of any Alcon products ordered; and
  - 2.7.4 any and all sums unpaid in respect of Alcon products shall become immediately due and payable.
- 3. BUYER'S OBLIGATIONS**

- 3.1. All stocks of Alcon products in possession of the buyer shall be stored in accordance with the conditions of storage as issued or amended by Alcon from time to time. The buyer remains fully responsible for correct storage, Alcon will make no provision or contribution to the buyer for means of storage.
- 3.2. Alcon shall be entitled with the prior agreement of the buyer (which shall not be unreasonably withheld or delayed) to send its authorised representative(s) at all reasonable times to any of the buyer's depots or sub-depots to inspect the buyer's stocks of Alcon products or other items.
- 3.3. Alcon representatives and the buyer's representatives will, every three (3) months (or more frequently, at Alcon's discretion on notice to the buyer) carry out regular inspections to establish the following and to ensure that no stock has exceeded its expiry date and minimise waste. Stock which has nine (9) months or less unexpired shelf life will be identified to the buyer and for Alcon's records. Alcon's representatives will attach stickers to that stock. Stock will be prioritised for use as follows:
- (i) stickered stock with nine (9) months or less unexpired shelf life is to be used first;
  - (ii). Stock with between nine (9) and fifteen (15) months of unexpired shelf life is to be used second;
  - (iii) stock that has more than fifteen (15) months of unexpired shelf life should be used as a third priority. If requested by the buyer, Alcon shall make available a report of the relevant stock identified pursuant to this clause;
- 3.4. The adequacy of stock levels will be determined by Alcon in its sole discretion, to provide for the buyer's current usage patterns. In order to minimise waste through expiration of shelf life, Alcon reserves the right to control the supply of certain models or powers of IOLs, acting reasonably
- 3.5. For the avoidance of doubt, clause 3.3 operates to ensure:
- (a) that the buyer's stock usage is occurring on a First Expire First Out basis.
  - (b) that any change in the mix of products provided pursuant to this Agreement may be changed with the prior written consent of Alcon in order to suit the needs of the buyer.
  - (c) quality and condition of the stock and their conditions of storage.
- 3.6. In all correspondence a buyer must quote the order number quoted by Alcon and where requested by Alcon, must also quote the manufacturer's batch number of Alcon products.
- 3.7. In submitting orders to Alcon, the buyer warrants that in ordering Alcon medicinal products for resale, the buyer will comply with Regulation 8(1)(b) of The Medicines for Human Use (Manufacturing, Wholesale Dealing and Miscellaneous Amendments) Regulations 2005 No 2789. When ordering contact lens products, the buyer will comply with the Opticians Act 1989 (as amended).
- 4. PRICE**
- The price of the Alcon products shall be the price set out in Alcon's published price list from time to time or as otherwise agreed in writing between the parties from time to time. All prices for Alcon products shall be subject to alteration without prior notification. All prices are quoted in the relevant local currency and are exclusive of VAT or any other applicable tax levied on purchase of Alcon products. Alcon products will be invoiced at prices applicable as at the date of processing of an order on Alcon systems. All prices shall be rounded to the nearest two (2) decimal places.
- 5. PAYMENT**
- 5.1. Invoices are due for payment, and the credit date is, the date specified on the invoice issued by Alcon with a delivery of Alcon products or if no such date is stated, 30 days after the invoice date. Unless otherwise agreed in writing with a statutory director of Alcon, payment must be made by BACS or by electronic transfer and reach Alcon's account, as cleared funds, no later than the credit date. At its option, Alcon may require or allow payment by direct debit or credit card.
- 5.2. If the buyer fails to make payment on the credit date Alcon shall be entitled without prejudice:
- 5.2.1. to any other rights it may have, to cancel the Contract or suspend any further deliveries to the buyer; and
  - 5.2.2. to appropriate any payment made to Alcon to such outstanding invoice/invoices as Alcon may think fit.
- 5.3. All invoices shall be paid without any deduction whether by way of set off, counterclaim, discount, abatement, withholding or otherwise except for any deduction or withholding required by law or agreed overpayments and credits which have been given. Alcon may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the buyer against any amount payable by Alcon to the buyer.
- 5.4. If for any reason an invoice is unpaid on the credit date Alcon reserves the rights set out in the following sub-clauses:
- 5.4.1. to either not supply, or to postpone delivery of any orders placed by the buyer but not yet fulfilled or delivered by Alcon;
  - 5.4.2. to claim immediate payment of all invoices despatched, including those where the credit date has not been reached, even if delivery has

- not taken place and the property in any products has not passed to the buyer;
- 5.4.3. to be paid on an indemnity basis any costs Alcon incurs in recovering any monies due under the Contract (and the costs of recovering such costs) including its administrative costs and any costs incurred with lawyers or debt collection agencies. Alcon's administrative costs may include the costs of employing the staff concerned and the overheads attributable to them for the time spent. In calculating administrative costs, credit will be given for any compensation due under the Late Payment of Commercial Debts (Interest) Act 1998;
- 5.4.4. to claim interest and compensation under the Late Payment of Commercial Debts (Interest) Act 1998, it being agreed that the terms implied by that Act shall apply after any judgment as well as before.
- Any reference to The Late Payment of Commercial Debt (Interest) Act 1998 is also a reference to any amendment, modification or re-enactment of it.
- 6. DELIVERY ERRORS**
- 6.1 In the event that on receipt of a delivery it is apparent that:
- 6.1.1 there is a shortage;
- 6.1.2 over-delivery; or
- 6.1.3 signs of damage to the product packs and the buyer wishes to make a claim; the buyer must notify Alcon of the issue within five business days of the delivery. In the case of damages the buyer must retain the packaging in the state, condition and location in which they were delivered or take photographs of the delivery.
- 7. RETURNED PRODUCTS POLICY**
- 7.1 For security reasons, Alcon does not accept unauthorised returned products. Any unauthorised returns delivered to Alcon may be destroyed immediately without investigation. No compensation will be provided in such circumstances.
- 7.2 If a return is required for any reason other than under clause 6.1 above, the buyer will obtain Alcon's prior written consent to such return, before it effects a return. Alcon may accept or refuse such a proposed return of Alcon product, in its sole discretion, except in the following circumstances:
- 7.2.1 in relation to contact lenses where notification must be made within ninety (90) days of receipt of delivery;
- 7.2.2 in relation to all intraocular lenses and consumables where notification must be made within sixty (60) days of the buyer's receipt of such items, and such items may only be returned if they are in a saleable condition and have at least six (6) months to their expiry date; and
- 7.2.3 in the case of a latent defect in any good, where notification must be made within a reasonable time of the latent defect having become apparent.
- 7.3 No products may be returned for consideration of credit or replacement unless the buyer:
- 7.3.1 Contacts the customer services department of Alcon to obtain a unique returns number and returns label which must be affixed to the items being returned;
- 7.3.2 Ensures that Alcon receives the completed returns form within the packaging containing the returned product and the returns label, to be affixed to the returned product. No other products are to be shipped back in the package.
- In the event that the buyer returns other products not described in the completed returns form, Alcon may return such product at the buyer's expense or retain and re-sell those products without credit to the buyer. The only products exempted from the returns obligations in this clause 7 are those Alcon products described in clause 7.6.
- Pads of blank copies of the returns form may be distributed from time to time by Alcon to customers' premises, may be available on delivery notes, may be obtained from Alcon's Customer Care Department on request or may be downloaded from the Easy ONLINE Patient Management System. Failure of the buyer to provide a fully completed returns form shall constitute an unauthorised return. Alcon will provide assistance by telephone and email in the first six months after the Effective Date to ensure that the buyer understands their obligations under this clause 7.3.
- 7.4 The approval for any return will be given at Alcon's discretion. In the event that Alcon has accepted to receive a return, Alcon should receive the returned product before the stated expiry date. Alcon will provide the address for returns to the buyer. For the avoidance of doubt, replacement of that expired product is at the discretion of Alcon.
- 7.5 For the avoidance of doubt a credit of the price paid by the buyer is only to be considered in respect of:
- 7.5.1 Alcon products sent by Alcon in error;
- 7.5.2 Alcon products returned, when Alcon quality control checks show the complaint to be justified; or
- 7.5.3 Alcon products which have been supplied with less than six months' unexpired shelf life at the date that delivery occurred; or
- 7.5.4 Alcon contact lenses, provided that the lenses were supplied for use by a specific patient, the patient's prescription has changed and the products returned amount to not more than 6 months' supply for that patient's full-time wear.
- 7.6 The following Alcon products will **not** in any event be accepted for credit:
- 7.6.1 date-expired stock;
- 7.6.2 products with outer packaging or seals that are broken and/or damaged;
- 7.6.3 products which require special storage conditions such as temperature controlled storage and transportation;

- 7.6.4 products which are not the subject of a completed returns form received within the required timescale by Alcon's Customer Care Department; and
- 7.6.5 products which need to be returned as a result of any acts or omissions of the buyer.

## 8. BATCH RECALL

In order to facilitate any batch recall the buyer shall maintain suitable records such as order quantities and, where possible, associated batch numbers in respect of all sales to customers. In the event of any batch recall the buyer shall co-operate with Alcon in taking all necessary steps to remove the relevant batch(es) from the market within the specified time. Alcon products that are recalled from the buyer's customers may be reimbursed by Alcon to the buyer at prices determined by Alcon at its discretion.

## 9. REPACKAGING

The buyer shall only resell Alcon products in original selling packs supplied by Alcon without any breaking down or repacking.

## 10. PATENTS AND TRADEMARKS

- 10.1 Nothing in the conditions shall be construed as granting or implying the grant of any licence under any patent, trade mark or other intellectual property rights held by Alcon anywhere in the world and Alcon shall be entitled to exercise such rights to the fullest extent legally permissible at the time of such exercise.
- 10.2 Unless this is necessary for the purpose of resale in the United Kingdom, no trademarks of which Alcon, (or any of its Affiliates or associates) are proprietors or authorised users shall be applied by the buyer to any goods originally supplied by Alcon (or any such Affiliate or associate of Alcon) on removal from their original container. Unless this is necessary for the purpose of resale in the United Kingdom, if a trademark is affixed on Alcon products when originally supplied by Alcon such trademark shall not be altered, partly removed or partly obliterated.
- 10.3 Alcon gives no warranty or representation that Alcon products do not infringe any patent, trademarks, registered designs or other intellectual property rights of any third party anywhere in the world.

## 11. TERMINATION/SUSPENSION

- 11.1 Without affecting any other rights and remedies it might have, Alcon shall be entitled to terminate the Contract and/or suspend its performance at any time without liability to the buyer by giving written notice to the buyer at any time if the buyer:
- 11.1.1 is in breach of any provision of, or purports to cancel, the Contract; or

11.1.2 has any corporate action, application, order, proceeding or appointment or other step taken or made by or in respect of it for any composition or arrangement with creditors generally, winding-up, other than for the purpose of a bona fide scheme of solvent reconstruction or amalgamation, dissolution, administration, receivership (administrative or otherwise) or bankruptcy, or if it is unable to pay its debts as they fall due, or if it ceases to trade or if a distress, execution or other legal process is levied against any of its assets, or if any event analogous to any of the foregoing shall occur in any jurisdiction in which the buyer is incorporated, resident or carries on business.

- 11.2 Any termination however caused shall not affect:
- 11.2.1 any right or liabilities which have accrued prior to the time of termination; and
- 11.2.2 the continuance in force of any provision of the Contract which expressly or by implication is intended to come into or continue in force after termination including without limitation clauses 5 (Payment) and 19 (Assignment/Subcontracting).

## 12. CONFIDENTIALITY AND PUBLICITY

12.1 The buyer shall not, without the prior approval of Alcon take or permit to be taken any photographs of Alcon facilities or of any other property or staff of Alcon or of any Alcon Affiliates for use in any publicity or advertising or otherwise. If Alcon gives such consent, such photographs may be used only for the purpose authorised by Alcon.

12.2 The buyer (and their agents and employees) shall not, without the prior approval of Alcon, disclose to any other person any confidential information relating to Alcon, its Affiliates and their products, operations, processes, business, customer base, pricing and employees which is not in the public domain or already in the possession of the buyer ("Confidential Information"), except that the obligations contained in this clause shall not prevent any disclosure of Confidential Information which is required by law, court order or any legal or regulatory authority or disclosure to a party's professional advisors subject to a duty of confidence.

12.3 The buyer shall ensure that its employees are given access to the Confidential Information only on a "need to know" basis in relation to the works and that such employees are informed of the confidential nature of the Confidential Information and are contractually bound to safeguard the Confidential Information on terms the same or similar to those set out in these conditions.

12.4 In the event that any request for disclosure is made to the buyer under the Freedom of Information Act 2000 for disclosure of any Confidential Information, the buyer will consult



- Alcon at least 10 business days before it is due to respond to any such request.
- 12.5 For the purposes of these conditions an Alcon “**Affiliate**” is any organisation or subsidiary directly or indirectly controlled by Alcon Eye Care UK Limited or which is under joint control with Alcon Eye Care UK Limited or any of its subsidiaries, “**control**” being the ownership of a greater than 50 per cent voting interest (whether held directly or indirectly) at a directors’ or shareholders’ meeting. This Contract is made for the benefit of, and Alcon’s rights may be enforced by, all Alcon Affiliates but Alcon and the buyer may vary or rescind this Contract without notifying any such Alcon Affiliates.
- 13. INDEMNITY**
- The buyer shall indemnify and hold Alcon harmless from and against any liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by Alcon and arising in contract or in tort, negligence or otherwise (and whether or not Alcon has advised the buyer of the possibility of such loss or damage), arising out of or in connection with (i) any failure by a buyer (or its agents and employees) to comply with the law or breach of the Contract, or (ii) any neglect of the buyer (or its agents and employees) in respect of the Alcon products or (iii) any use or sale of any products manufactured by the buyer and incorporating Alcon products.
- 14. FORCE MAJEURE**
- Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent such failure or delay is caused by events beyond its reasonable control, including but not limited to acts of God, fire, strikes, lockouts, deliberate damage, shortage of materials or power, pandemic, accidents and breakdowns of plant or machinery or prohibition or restriction by a competent authority (“**Event of Force Majeure**”). If an Event of Force Majeure continues for more than a period of 30 days, Alcon shall be entitled at its discretion and without liability, to perform, suspend performance of, and/or terminate the Contract.
- 15. ENFORCEABILITY, WAIVER, CUMULATIVE REMEDIES**
- 15.1 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 15.2 A waiver of any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 15.3 Except as set out in these conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is in writing and signed by Alcon.
- 15.4 These rights and remedies are cumulative and (subject as otherwise provided) are not exclusive of any right or remedy provided by law. No exercise by Alcon of any one right or remedy shall (save unless expressly provided otherwise) operate so as to hinder or prevent the exercise by it of any other right or remedy.
- 16. LAW AND DISPUTES**
- The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).
- 17. WARRANTY AND LIABILITY**
- 17.1 Alcon warrants that the Alcon products shall at the time of delivery materially conform to the manufacturer’s standard specification and be reasonably fit for the purpose for which they are supplied provided that they are strictly used in accordance with the directions, recommendations and precautions for use on the label on the Alcon products and in any leaflet or other written instructions or guidance issued by Alcon in respect thereof. All other conditions and warranties expressed or implied, statutory or otherwise, are excluded to the fullest extent permitted by law. This Contract shall not constitute a sale by description or sample. Alcon reserves the right to make any changes in the specification of the Alcon products which are required to conform with any applicable legal requirements or which do not materially affect their quality or performance.
- 17.2 Alcon shall only be liable to any buyer in respect of claims notified to Alcon in accordance with

- these conditions and in particular clause 6 (Delivery Errors) and clause 7 (Returned Products Policy) of these conditions.
- 17.3 Notwithstanding any other provision of the conditions but subject to clause 17.4, Alcon shall have no liability to the buyer arising out of or in connection with the Contract or Alcon products for (a) any loss of or damage to profit, revenue, anticipated savings, data, use, contract, goodwill, opportunities or business or (b) any indirect or consequential loss or damage whether or not Alcon has been informed of the possibility of such loss or damage, or (c) any claim arising out of a claim against the buyer by any third party, in each case, however arising.
- 17.4 Nothing in these conditions shall limit or exclude any liability or any remedy to the extent prohibited or limited by law and in particular nothing in the Contract shall affect liability (a) for death or personal injury caused by negligence or (b) arising from any fraudulent misrepresentation or any other fraudulent act or omission by or on behalf of any party.
- 17.5 Subject to clauses 17.3 and 17.4 the aggregate liability of Alcon for any claims arising out of or in connection with the Contract, the products or these conditions however arising (and whether asserted by the buyer on its behalf or on behalf of third parties) shall be limited to and in no circumstances shall exceed the total invoice price of the Alcon products in respect of which the claim relates and the transport costs identified in clause 2.1 less any discount given (in whatever form) and excluding VAT.
- 17.6 The term "however arising" when used or referred to in this clause 17 shall cover all causes and actions giving rise to liability of Alcon arising out of or in connection with these conditions, the Contract or the products (i) whether arising by reason of any misrepresentation (whether made prior to and/or in the Contract) negligence, breach of statutory duty, other tort, repudiation, renunciation or other breach of contract, restitution or otherwise; (ii) whether arising under any indemnity; (iii) whether caused by any total or partial failure or delay in supply of the products or by any defect in materials; and (iv) whether deliberate (but not with malicious intent) or otherwise, however fundamental the result.
- 18 THIRD PARTY RIGHTS**
- 18.1 All Alcon Affiliates and all employees, agents and subcontractors of Alcon shall each be entitled, in its own right pursuant to the Contracts (Rights of Third Parties) Act 1999 ("TP Act"), to enforce every defence and limitation expressed to be in favour of Alcon under these terms and the Contract to the extent determined by Alcon in its absolute discretion from time to time, as if such defences and limitations were expressed to be for the benefit of the relevant third party. Also, each Alcon Affiliate shall be entitled in its own right to enforce, pursuant to the TP Act, all indemnities in these terms and the Contract expressed to be in favour of Alcon to the extent determined by Alcon in its absolute discretion from time to time, as if such indemnities were expressed to be for the benefit of the relevant Alcon Affiliates. The buyer and Alcon shall not be required to notify or obtain the consent of any third party in order to rescind or vary the Contract or any provision of it. The aggregate liability of all third parties and Alcon collectively to the buyer shall be no greater than the liability of Alcon alone, as set out in the Contract. No third party may assign or otherwise transfer any of their rights referred to in this clause 18. Save as referred to in this clause 18 no provision of a Contract shall be enforceable pursuant to the TP Act by any person who is not a party to it.
- 19. ASSIGNMENT / SUBCONTRACTING**
- 19.1 Alcon may perform any of its obligations or exercise any of its rights under the Contract itself or through any Alcon Affiliate, provided that any act or omission of any such Affiliate shall be deemed to be the act or omission of Alcon.
- 19.2 Alcon may at any time assign, transfer, charge or deal in any other manner with any of its rights hereunder, and may sub-contract any or all of its obligations under the Contract.
- 19.3 The buyer shall not assign, transfer, charge, hold on trust for another or deal in any other manner with any of its rights or obligations under the Contract, or purport to do so, or sub-contract any or all of its obligations under the Contract without the prior written consent of Alcon in its absolute discretion.
- 20. DATA PROTECTION AND CALL RECORDING**
- 20.1 Each party agrees that, in the performance of its respective obligations under these conditions, it shall comply with the provisions of the Data Protection Act 2018 (the "Act") to the extent it applies to each of them. Where used in this clause 20, the expressions "process", "Personal Data", "Data Processor", "Data Controller" and "Data Subject" shall bear their respective meanings given in the Act.

- 20.2 Where the buyer is acting as a Data Controller, the buyer must ensure that any processing of Personal Data in connection with this Contract for which they are responsible complies with the Act. Where the buyer provides Personal Data to Alcon or its appointed agents, for example in the event that the buyer is providing Personal Data relating to the buyer's customers to Alcon or its appointed agents during the term of this Contract for marketing purposes or in relation to the supply of products, it warrants that it has obtained such Personal Data lawfully under the Act and is entitled to provide it to Alcon and for Alcon to use it for reasons connected with this Contract. Where Personal Data is provided by the buyer to Alcon, Alcon will process such Personal Data strictly in accordance the Act for the purpose of fulfilling its contractual obligation and any guidelines provided by Alcon in connection with the processing of such Personal Data.
- 20.3 Where the buyer is acting as a Data Processor in relation to Personal Data processed in relation to this Contract, it shall process the Personal Data strictly in accordance with the terms of the Act and in accordance with Alcon's instructions, unless otherwise required by law or any other regulatory body.
- 20.4 Both parties shall ensure, in relation to their respective processing of Personal Data, that appropriate operational and technical measures are in place to safeguard against any unauthorised access, loss, destruction, theft, use or disclosure of the Personal Data and, having regard to the state of technological development and the cost of implementing any measures, the measures must ensure a level of security appropriate to the harm that might result from unauthorised or unlawful processing or accidental loss, destruction or damage. Each party agrees to notify the other party in the event that one party receives a request or notice from a Data Subject exercising his rights under the Act in relation to Personal Data being processed by the other party and to assist the other party promptly with all subject access requests which may be received from Data Subjects.
- 20.5 Alcon records incoming and outgoing calls for quality and training purposes and for the purpose of evidencing business transactions, in compliance with applicable law.

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