

ANNEX 1

Terms of Consignment Stock Agreement

1 Definitions

1.1 **"Adverse Event"** means any untoward medical occurrence, unintended disease or injury, or untoward clinical signs (including abnormal laboratory findings) in subjects, users or other persons, whether or not related to the medical device.

1.2 **"Business Day"** means a day that is not a Saturday, Sunday or public holiday in the Territory.

1.3 **"Consignment Stock"** means those products and quantities as specified in Schedule 1, belonging to Alcon to be supplied to the Customer pursuant to this Agreement, (including any instruments or manuals provided free on loan to undertake procedures for which the Consignment Stock is intended), held by the Customer at the Facility on a consignment basis.

1.4 **"Event of Special Interest"** means an event that is of special interest to health authorities, and therefore required to be recorded by Alcon, including use error, abnormal use, product tampering, product counterfeiting and product theft.

1.5 **"Facility"** means such storage and/or warehousing facility of the Customer as the Customer shall specify to Alcon for the receipt and storage of the Consignment Stock.

1.6 **"First Expire First Out"** the use of Consignment Stock in date order, where the Consignment Stock with the shortest expiry date is used first by the Customer.

1.7 **"Medical Device Malfunction"** means the failure of a device to meet its performance specifications or otherwise perform as intended. If a medical device detects an operating problem during use, and per its design defaults to a "safe" mode, the event that triggered the default may be a medical device

malfunction and must therefore be submitted to Alcon for evaluation.

1.8 **"Product Complaint"** means any oral, electronic or written communication that alleges deficiencies related to the identity, quality, durability, reliability, safety, effectiveness or performance of a marketed product, including failure of the product, labelling or packaging to meet specifications, whether or not the product is related to or caused the alleged deficiency. A complaint may allege that an Adverse Event or Medical Device Malfunction (as defined below) has occurred.

1.9 **"Replenish" or "Replenishment"** means the process by which the Customer will order replacement Consignment Stock and pay for Consignment Stock it has used.

1.10 **"Territory"** means India and its territories and possessions.

2 Obligations of the Parties

2.1 Alcon shall supply to the Customer and the Customer shall hold on consignment at the Facility the Consignment Stock required by the Customer pursuant to this Agreement as detailed in Schedule 1

2.2 As and when required for use by the Customer, the Customer shall select required Consignment Stock for usage from the Facility. In doing so, the Customer shall use the Consignment Stock on a First Expire First Out basis.

2.3 In addition to the terms of this Agreement, the Customer agrees that the Alcon General Conditions of Sale shall be incorporated into this Agreement.

2.4 All deliveries to Replenish the Consignment Stock shall be made by Alcon to the Facility and shall be tracked,

- registered and delivered to the Facility with accompanying transport documentation for such Consignment Stock and referencing that such are Consignment Stock.
- 2.5 Alcon representatives and Customer representatives will every **6 month** (or more frequently, at Alcon's discretion on notice to the Customer) carry out regular inspections to establish the following and to ensure that no Consignment Stock has exceeded its use by or expiry date:
- (a) that Consignment Stock which has 9 months or less unexpired shelf life are identified to the Customer and for Alcon's records. If requested by the Customer, Alcon shall make available a report of the relevant Consignment Stock identified pursuant to this clause 2.6(a);
 - (b) that Consignment Stock levels are adequate as determined by Alcon, to provide for the Customer's current usage.
 - (c) that Customer's Consignment Stock usage is occurring on a First Expire First Out basis.
 - (d) 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 Customer.
 - (e) quality and condition of the Consignment Stock and their conditions of storage.
- 2.6 Notwithstanding any inspections or audits conducted by Alcon under the terms of this Agreement, the Customer acknowledges and agrees that it remains responsible for using the Consignment Stock on a First Expire First Out basis and regularly conducting its own independent inspections and audits of the Consignment Stock at its own cost and expense.
- 2.7 The Customer shall return to Alcon Consignment Stock which has **less than 6 months and 2 weeks** of unexpired shelf life, using a tracked and secure method of delivery.
- 2.8 The Customer shall bear the risk of loss and any expense of returning any Consigned Stock pursuant to clause 2,8.
- 2.9 The Customer shall notify Alcon within 3 Business Days of any Consignment Stock being returned to Alcon by email. In each such email, the Customer shall accurately provide details of the Customer account number, delivery tracking number, product type(s), quantities and serial or batch numbers of the returned Consignment Stock.
- 2.10 The Customer shall pay to Alcon the price for any Consignment Stock which is returned with unexpired shelf life of less than **less than 6 months and 2 weeks**. The Customer shall pay for such Consignment Stock within 30 days from the date of receipt of an invoice for the relevant amount. Such Consignment Stock shall be invoiced at prices applicable as at the date of processing the returned Consignment Stock on Alcon systems.
- 2.11 The Customer shall provide at least 14 Business Days' written notice to Alcon of any change to the Facility's address.
- 3 Stock Payment Terms**
- The Consignment Stock shall be placed **as set out in Schedule 1 as amended from time to time**
- 3.1 Invoices are due for payment on the date specified on the invoice issued by Alcon. Unless otherwise agreed in writing by an officer or director of Alcon, payment must be made by electronic transfer and reach Alcon's account, as cleared funds, no later than the credit date.
- 4 Consignment Stock Storage**
- 4.1 The Customer shall store the Consignment Stock in a secure location at the Facility in accordance with the storage conditions provided with the Consignment Stock.

- 4.2 The Customer shall handle and store the Consignment Stock with all due care and skill so as to maintain Consignment Stock in perfect condition and shall protect the Consignment Stock from any loss or damage.
- 4.3 The Customer shall:
- (a) store the Consignment Stock in its possession separately from all other goods (including other products purchased from the Company) held by the Customer in an area separated from the rest of the Facility so that the Consignment Stock remains readily identifiable and traceable as Consignment Stock and the property of Alcon;
 - (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Consignment Stock.
- 4.4 A written record showing Consignment Stock quantities, quality and condition at the time of the audit shall be made by Alcon, signed by both parties with a copy provided to the Customer. Alcon shall as soon as reasonably practicable notify the Customer of any discrepancies between the quantities of Consignment Stock recorded at the time of the audit and those detailed on Schedule 1 or of any deterioration in the quality or condition of any Consignment Stock. Any discrepancy advised to the Customer by the Company more than 3 months following the inspection shall be considered invalid.
- 4.5 The Customer shall cooperate fully with any such inspections or audits pursuant to clauses 2.6.
- 4.6 If requested, the Customer shall make available to Alcon during the course of an inspection or audit pursuant to clause 2.6, all records and reports relating to the Consignment Stock and allow its representatives to have access to them and to take copies as required.
- 4.7 Subject to clause 4.5, if an audit identifies that the Customer has underpaid Alcon

for the Consignment Stock used by it, the Customer shall pay to Alcon the amount of the under payment. An invoice for payment will be issued to the Customer pursuant to clause 3.1.

5 Title and Risk

- 5.1 Title and ownership of the Consignment Stock shall remain with Alcon until the earlier of: (a) payment in full for each Consignment Stock has been received by Alcon from the Customer; and (b) the relevant Consignment Stock are used by the Customer, at which point title and ownership shall transfer to the Customer.
- 5.2 Except as provided in clause 5.3 below, the risk of loss and damage to the Consignment Stock shall remain with Alcon until delivery to the Facility. The Customer shall be responsible for any loss or damage caused to the Consignment Stock following delivery to the Facility.
- 5.3 Except as expressly stated in this Agreement, the risk of loss to the Consignment Stock exceeding its use by or on expiry dates shall remain with Alcon.

6 Term and Termination

- 6.1 This Agreement shall commence as of the Start Date and shall remain in force until End Date as mentioned in the Agreement, unless terminated earlier by either party in accordance with clause 6.2.
- 6.2 This Agreement may be terminated at any time by either party on thirty (30) days written notice to the other.
- 6.3 On termination of this Agreement however so arising, Alcon shall be permitted to enter the Facility or any premises where the Consignment Stock are held to recover the Consignment Stock from the Customer. The Customer shall cooperate fully with Alcon with respect to any such recovery by Alcon of the Consignment Stock pursuant to this Agreement.

7 Recall

- 7.1 Consistent with medical device regulatory requirements, Alcon maintains detailed internal procedures for receiving and evaluating product complaints, including an assessment as to whether a complaint reports a product malfunction that has, may have, or has the potential to cause or contribute to death or serious injury. In accordance with its internal procedures, Alcon undertakes market action as appropriate to address device malfunctions or other medical device issues, including voluntary corrections, removals and recalls. In cases where a recall is appropriate, the recall is conducted in accordance with applicable laws.
- 8 Product Complaints**
- 8.1 Any Product Complaint or Event of Special Interest received by the Evaluator in relation to the Products shall be forwarded to Alcon immediately upon receipt and in any event by no later than 1 Business Day following receipt. The Evaluator shall forward a copy of the source document and all available information to Alcon to **complaint.india@alcon.com**.
- 9 Warranty**
- 9.1 To the extent the products are designed and manufactured by Alcon, Alcon represents and warrants that all products as of the date of delivery by Alcon are:
- (a) free and clear of all liens and encumbrances;
 - (b) free from all defects or deficiencies in design, materials and workmanship; and
 - (c) manufactured and labelled in compliance with applicable laws relating to medical devices and, without limiting the foregoing, are not adulterated or misbranded within the meaning of the applicable laws.
- 9.2 Alcon makes no other warranty, express or implied, as to the products and specifically disclaims all other warranties including, without limitation, any implied warranties or merchantability and fitness for a particular purpose.
- 10 Limitation of Liability**
- 10.1 In no event shall either party be liable for lost profits, injury to goodwill, or any other special, incidental or consequential damages, even if that party has been advised of the possibility of such damages. The Customer agrees that under no circumstances will Alcon's liability relating to its sale of products to the Customer for any cause exceed the purchase price paid by the Customer for the particular products involved.
- 11 Data Protection**
- 11.1 The parties shall act as separate data Controllers for the duration of the Agreement and shall comply with the applicable data protection legislation.
- 12 Notices**
- 12.1 All notices required or permitted under the Agreement shall be sufficient if sent via mail or express courier delivery to a party at its address as set forth in this Agreement, or such other address as the party may designate to the other in writing from time to time. Any such notice sent via mail shall be effective 3 days after it has been duly addressed and postmarked. Notices may be delivered electronically only with written acknowledgement of receipt by the other party, effective upon such acknowledgement of receipt.
- 13 Severability**
- 13.1 In the event any provision of this Agreement is held to be illegal, invalid or unenforceable, such provision shall be limited or eliminated to the minimum extent necessary. The parties shall in good faith attempt to substitute a valid and enforceable provision which achieves to the nearest extent possible the same effect as would have been achieved by the invalid or unenforceable provision. Notwithstanding the foregoing, the invalidity or unenforceability of any term or provision

of this Agreement shall not affect the validity or enforceability of any other term or provision hereof.

14 Waiver

14.1 The failure of a party to insist upon strict adherence to any term of this Agreement on any occasion shall not be considered a waiver or deprive that party of the right to insist upon strict adherence to that term or any other term of this Agreement. Any waiver must be in writing and signed by the party making the waiver.

15 Survival

15.1 Any provision of this Agreement that by

its general nature and operation imposes or contemplates continuing obligation, including but not limited to the provisions pertaining to Insurance, Termination, Notices and Audit shall remain in force and effect notwithstanding the termination or expiration of this Agreement.

16 Law and Jurisdiction

16.1 This Agreement is governed by and construed in accordance with the substantive and procedural laws of India (without regard to conflict of law principles). In case of any dispute, the courts in Bengaluru shall have the exclusive jurisdiction.