

## **General Terms and Conditions of Purchase (With Purchase Order issued by Alcon)**

- 1. Acceptance - Agreement.** Seller's commencement of work on the goods and/or services subject to Purchase Order or other documents as a purchase order ("Purchase Order") or shipment of such goods and/or services, whichever occurs first, is deemed an effective mode of acceptance of this General Terms and Conditions of Purchase ("GTP"). Any terms proposed in Seller's acceptance of Purchaser's offer which add to, vary from, or conflict with the terms herein are hereby objected to and rejected, but such proposals do not operate as a rejection of Purchase Order, unless such variances are in the terms of the description, quantity, price or delivery schedule of the goods and/or services, but are deemed a material alteration thereof, and this offer is deemed accepted by Seller without said additional or different terms. If Purchase Order has been issued by Purchaser in response to an offer and if any of the terms herein are additional to or different from any terms of such offer, then the issuance of Purchase Order by Purchaser constitutes an acceptance of such offer subject to the express condition that Seller assents to such additional and different terms herein and acknowledges that Purchase Order constitutes the entire agreement between Purchaser and Seller with respect to the subject matter hereof and the subject matter of such offer, and Seller is deemed to have assented and acknowledged unless Seller notified Purchaser to the contrary in writing within 10 days of receipt of Purchase Order and Purchaser, in writing, acknowledges its acceptance of the variance of terms. In the event Purchase Orders are sent electronically, Purchaser has no liability for orders erroneously placed upon Seller due to the malfunction of the electronic data processing equipment.
- 2. Delivery of Goods and Risk of Loss.** Unless otherwise stated on Purchase Order, Seller must arrange for the delivery of goods and bear all risk of loss until the goods are delivered to location Purchaser appointed. Shipment must be made by Seller to Purchaser in accordance with a delivery date provided by Purchaser's ordering location. Seller must notify Purchaser within 24 hours of receipt of any order if it cannot comply with the schedule supplied by Purchaser. For all goods delivered, Seller must provide the name and address of the manufacturer (if Seller is not the actual manufacturer), the part number, and the manufacturing batch/lot number of the goods being purchased.

Each party will notify the other in writing of the cause of such delay within 5 days after the beginning thereof. To the extent that, and so long as the obligations of either party are affected by any such cause or event, such obligations are suspended provided, however, that time is of the essence of Purchase Order and should Seller fail to comply with Purchaser's delivery schedule or otherwise fail to comply with its obligations hereunder, Purchaser may terminate Purchase Order without liability.

- 3. Termination.** Purchaser reserves the immediate right to terminate Purchase Order or any part hereof for its sole convenience. In the event of such termination, Seller must immediately stop all work hereunder, and must immediately cause any of its suppliers or subcontractors to cease such work. Seller will be paid a reasonable termination charge consisting of a percentage of the order price reflecting the percentage of the work satisfactorily performed prior to the notice of termination. Seller will not be paid for any work done after receipt of the notice of termination nor for any costs incurred by Seller's suppliers or subcontractors which Seller could reasonably have avoided. Purchaser may also terminate Purchase Order or any part hereof for cause in the event of any default by the Seller, or if the Seller fails to comply with any of the terms and conditions of this GTP and Purchase Order. Late deliveries, deliveries of products which are defective or do not meet specifications or do not conform to Purchase Order, oversupplies and undersupplies of more than 5%, and/or failure to provide Purchaser, upon request, of reasonable assurances of future performance, are all causes allowing Purchaser to terminate Purchase Order for cause. In the event of termination for cause, Purchaser is liable to Seller for goods and/or services that comply with the terms and conditions of Purchase Order and any corresponding specifications and Seller is liable to Purchaser for any and all damages allowed under applicable laws, including but not limited to damages and expenses incurred, including consequential damages, by reason of the default which gave rise to the termination.

4. **Payment Terms.** Invoices must be submitted separately and may not be enclosed with the consignments of goods. Invoices must be sent to Purchaser in a format that complies with applicable laws and that has been approved by Purchaser. Purchaser has the right to reject all invoices that do not comply with these requirements. Unless otherwise agreed by Seller and Purchaser, payment will be made pursuant to Purchaser's standard payment term (at least 60 days) after receipt of invoice in the following scheduled payment cycle.
5. **Confidentiality.** Seller must consider all information furnished by Purchaser to be confidential and/or proprietary and must not disclose any such information to any other person, or use such information itself for any purpose other than performing Purchase Order or this GTP, unless Seller obtains written permission from Purchaser to do so. This paragraph includes, but is not limited to, drawings, specifications, or other documents prepared by Seller for Purchaser in connection with Purchase Order. Seller must not advertise or publish the fact that Purchaser has contracted to purchase goods and/or services from Seller, and the Seller must not disclose any information relating to the order without Purchaser's prior written permission.
6. **Intellectual Properties Rights.** All intellectual property rights ("IPR") arising directly from or in connection with Seller's provision of goods and/or services under Purchase Order are the exclusive property of Purchaser, and Seller hereby assigns to Purchaser (and there is no need to pay any fees by Purchaser) all rights in and to such IPRs. For the purposes of this paragraph, 'intellectual property rights' means all intellectual property rights throughout the world, in whatever form, and whether registered or unregistered, including, but not limited to, copyright, trade marks, patents, designs, diagrams, schematics, technical specifications or information, formulas, mechanical and chemical processes and procedures, trade secrets, software, circuit layouts, methods of working and business processes and procedures.
7. **Warranty.** Seller expressly warrants that:
  - a. all goods and/or services furnished under Purchase Order must conform to all specifications and appropriate standards and will be free from defects in material or workmanship; and
  - b. all goods and/or services will conform to any statements made on the containers, labels, or advertisements for such goods and/or services and that any goods will be adequately contained, packaged, marked and labeled; and
  - c. all goods and/or services furnished hereunder will be merchantable, and will be safe and appropriate for the purpose for which goods and/or services of that kind are normally used. If Seller knows or has reason to know the particular purpose for which Purchaser intends to use the goods and/or services Seller warrants that such goods and/or services will be fit for such particular purpose; and
  - d. all goods and/or services furnished will conform in all respects to samples; and
  - e. as to manufactured goods, Seller warrants that it must and will, as applicable, manufacture and perform all of its obligations hereunder consistent with the current good manufacturing practices as defined by applicable laws in each jurisdiction in which it conducts business; and
  - f. all goods and/or services are unencumbered and free of any security interests, charges, liens or other encumbrances of any kind, and Seller is prevented from registering a security interest against Purchaser on the Personal Property Securities Register (as that term is defined in the *Personal Property Securities Act 2009* (Cth)).

**These express warranties are in addition to any and all implied warranties by the Seller established by applicable laws.**

These warranties survive inspection, test, acceptance and use. Seller agrees to replace or correct defects in any goods and/or services not conforming to the foregoing warranty promptly, without expense to Purchaser,

when notified of such nonconformity by Purchaser. In the event of failure of Seller to correct defects in or replace nonconforming goods and/or services promptly, Purchaser, after reasonable notice to Seller, may make such corrections or replace such goods and/or services and charge Seller for the cost incurred by Purchaser in doing so. **This remedy is in addition to any other remedies permitted to Purchaser under applicable laws, all of which are expressly preserved.**

8. **Price Warranty.** Unless otherwise previously agreed in writing by both parties or aligned in relevant Purchase Order, Seller and Purchaser have agreed that the prices or the quotations for the goods sold to Purchaser hereunder will not change within 1 year as of the date when Seller accepts or deemed as accepting this GTP. After that, Seller and Purchaser will re-negotiate and bargain the price. Seller warrants that prices shown on Purchase Order are complete, and no additional charges of any type may be added without Purchaser's express written consent. Such additional charges include, but are not limited to shipping, packaging, labeling, custom duties, taxes, storage, insurance, boxing, and crating.
9. **Insurance.** In the event that Seller's obligations hereunder require or contemplate performance of services by Seller's employees, or persons under contract to Seller, to be done on Purchaser's property, or property of Purchaser's customer, the Seller agrees that all such work is done as an independent contractor and that the persons doing such work are not considered employees of the Purchaser. Seller must maintain all necessary insurance coverages, with coverage limits of no less than \$10 million (except in the case of Workers' Compensation insurance, where the level of cover must be as required by law), and with Insurance carriers as deemed appropriate by Purchaser, including, but not limited to, public liability (including contractual and product coverage), motor vehicle liability, Workers' Compensation Insurance, and professional liability (errors and omissions). Seller must furnish a Certificate of Insurance to Purchaser as evidence of appropriate coverages prior to providing goods and/or services to the Purchaser, if requested.
10. **Indemnification.** Seller must defend, indemnify and hold harmless Purchaser and its affiliates, and their respective directors, officers, shareholders, employees, and agents (collectively, "Indemnified Parties") against all damages of any kind, claims (including third party claims), costs, liabilities and/or expenses (including legal costs on a full indemnity basis) caused by, arising out of or resulting in any way to or from any defect in the goods and/or services purchased hereunder, or from any act or omission of Seller, its agents, employees or subcontractors, including without limitation any breach of this GTP. This indemnification is in addition to the warranty obligations of Seller, whether or not stated herein.

In addition, Seller must defend, indemnify and hold harmless the Indemnified Parties against all damages of any kind, claims, (including third party claims), costs, liabilities and/or expenses (including legal costs on a full indemnity basis) caused by, arising out of or resulting in any way from any allegation that the goods and/or services purchased hereunder infringe or violate any patent, copyright, trade secret, trademark, or other third-party proprietary rights (whether registered or unregistered), provided that Seller is notified in writing of such claim and given the authority, information and assistance necessary for the defense of said allegation. If, as a result of any such claim, an injunction or exclusion order prevents Purchaser's use, sale, lease, license, or other distribution of any of the goods and/or services purchased hereunder, Seller must, at its expense and upon Purchaser's request, use commercially reasonable efforts to (i) obtain for Purchaser and its customers the right to continue using such goods and/or services; (ii) replace or modify the infringing goods and/or services so that they become non-infringing while providing substantially the same functionality; or (iii) if the remedies in (i) and (ii) are not reasonably available, refund to Purchaser all of the fees paid by Purchaser for such infringing goods and/or services.

11. **Inspection/Testing.** Payment for the goods and/or services delivered hereunder does not constitute acceptance thereof. Purchaser has the right to inspect such goods and/or services and to reject any or all of said goods and/or services which are in Purchaser's judgment defective or nonconforming. Goods and/or services rejected and goods and/or services supplied in excess of 105% of quantities called for herein may be

rejected and returned to Seller at its expense and in addition to Purchaser's other rights. Purchaser may charge Seller all expenses of correcting, unpacking, examining, repacking and reshipping such goods and/or services. In the event Purchaser receives goods and/or services whose defects or nonconformity are not apparent on examination, Purchaser reserves the right to require compliance with the terms of Purchase Order and/or replacement, as well as payment of damages, including but not limited to consequential damages. Nothing contained in Purchase Order relieves in any way the Seller from the obligations of testing, inspection and quality control.

## 12. Compliance.

- a. Seller warrants that all goods and/or services supplied hereunder will have been produced in compliance with and Seller agrees to be bound by applicable laws and relevant government orders, decrees, rules or regulations in each jurisdiction in which it conducts business.
- b. Seller must comply with the law and to adhere to the current version of Alcon's Third Party Code of Conduct (the "Code") found at <https://www.alcon.com/about-us/responsible-business-practice> and as updated by Alcon from time to time. Seller must: (i) familiarize itself with and comply with the requirements of the Code; (ii) provide information on request to Purchaser concerning compliance with the Code; (iii) allow Purchaser (or its nominated third party experts) adequate access for the purposes of auditing compliance with the Code; and (iv) use its best efforts to rectify identified non-compliance with the Code and report remediation progress to Purchaser on request. At Purchaser's discretion, failure to adhere to the Code entitles Purchaser to terminate Purchase Order without compensation.
- c. With respect to goods sold by Seller to Purchaser under Purchase Order, and in future supply transactions, Seller agrees to provide Purchaser with such information, including an appropriate certificate of origin or other relevant, existing or future, trade agreements or tariff preference programs, as will enable Purchaser to determine the country of origin under such trade agreements or tariff preference programs.
- d. In the event of an investigation resulting from a reportable product incident or recall, Seller must grant recognized regulatory agencies or ministries (e.g. the Therapeutic Goods Administration), and organizations designated to assess the conformity of products before being placed on the market (e.g. the Therapeutic Goods Administration) with access to Seller's premises and quality system records as requested.

## 13. PPSA

- a. Defined terms in this clause 13 have the same meaning as given to them in the *Personal Property Securities Act 2009* (Cth) (**PPSA**).
- b. To the extent that the arrangement documented in these Terms constitutes a Security Interest:
  - i. this clause 13 applies;
  - ii. the Security Interest is created in, and the Seller grants to Purchaser a Security Interest in:
    - A. all goods that are the subject of a Purchase Order and/or that will be supplied in the future by Seller to the Purchaser, for which the Purchaser has paid the Seller all or part of the price but which have not yet been delivered to the Purchaser; and
    - B. all work in progress related to and all materials that are to be incorporated into such goods; and
    - C. all proceeds received by the Seller in relation to such goods, if any,

and a Financing Statement may be registered on the Register.

- c. The Seller acknowledges that the creation of, and granting of, the Security Interest gives rise to remedies of repossession, retention and/or sale of the goods in accordance with the PPSA or otherwise where Purchaser seeks to enforce the Security Interest.
- d. To the extent permissible at law, the Seller:
  - i. waives its right to receive notification of or a copy of any Verification Statement confirming registration of a Financing Statement or a Financing Change Statement relating to a Security Interest granted by the Seller to the Purchaser; and
  - ii. agrees to indemnify Purchaser on demand for all costs and expenses, including legal costs and expenses on a solicitor/client basis, associated with any registration, amendment, discharge, enforcement or attempted enforcement of any Security Interest, and all other costs associated with the perfection and enforcement of the Security Interest.
- e. To the extent permissible at law;
  - i. nothing in sections 130 to 143 of the PPSA will apply to this GTP, a Purchase Order or the Security Interest under this GTP; and
  - ii. the Seller waives its rights as they are set out in all the following sections of the PPSA: 95,118, 121, 123 and 129.
- f. The Seller must ensure that all third parties who may from time to time take or come into possession of the goods are advised of the Purchaser's Security Interest in such goods.
- g. Without limiting any other rights or remedies available to the Purchaser, in the event that any goods are not delivered in accordance with this GTP or the Purchase Order or any monies remain unpaid to the Purchaser after falling due for payment:
  - i. the Purchaser may, at its discretion, at any time and without notice (notwithstanding any prior failure to exercise such rights) take possession of the goods and for such purpose the Seller hereby irrevocably authorizes the Purchaser, and all persons authorised by it on their behalf, to enter the premises upon which the goods are located, for the purpose of so taking possession of the same;
  - ii. the Seller indemnifies and agrees to keep the Purchaser indemnified in respect of all losses, damages, costs, expenses, liabilities and claims, howsoever arising, suffered or incurred by the Purchaser that is caused by, arises from or is in connection with the Supplier taking any of the actions described in clause 13(g)(i);
  - iii. the Seller holds and agrees to hold the proceeds of any sale, lease or other dealing with the goods on trust for the Purchaser in a separate bank account with a bank which does not (and will not in the future) provide finance to the Seller; and
  - iv. the value of all goods taken by the Purchaser pursuant to this clause 13 may, at the Purchaser's absolute discretion, be assessed by the Purchaser (whose decision is conclusive) and if this occurs the Seller must (in addition to any other monies owing by the Seller to the Purchaser) pay to the Purchaser on demand the difference between the price of all goods taken and the assessed value of those goods, and the price paid by the Purchaser for those goods (if the price paid is higher).

- 14. Limitation on Purchaser's Liability.** To the extent permitted by law, Purchaser is not liable to the Seller in any circumstances for any indirect or consequential loss or damage of any kind, howsoever arising, and whether present or future, actual or contingent, fixed or unascertained, including, but not limited to, loss of anticipated profits, loss of use, loss of reputation, loss of goodwill, loss of business opportunity, special, punitive, aggravated or exemplary damages, fines, fees, charges or penalties.. Purchaser's liability on any claim of any kind for any loss or damage arising out of or in connection with or resulting from Purchase Order and/or from the performance or breach thereof will in no case exceed the purchase price allocable to the goods and/or services or unit thereof which gives rise to the claim. To the extent permitted by law, any action, claim or proceedings resulting from any breach on the part of Purchaser of the GTP or a Purchase Order must be commenced within one year after the cause of action has accrued, otherwise the Seller is barred from bringing that action, claim or proceedings.
- 15. Goods or Services Used in Manufacture of Purchaser's Finished Product (if applicable).** If Seller is or will be supplying Purchaser with a good (i.e., an ingredient, component, or process aid) or a service (for the purpose of this section, the "Product") to be used in the manufacture of Purchaser's product(s) ("Purchaser Finished Product"), Seller must comply with the following terms:
- a. Purchaser has the right to perform periodic audits at the Seller's facility.
  - b. In the event that Seller receives an announced or unannounced health authority inspection, Seller must notify Purchaser immediately. Upon Purchaser's request, Seller must provide to Purchaser a copy of any report and other written communications received from such government or regulatory agency in connection with such visit or inspection. Each of the parties agrees to cooperate to the extent reasonably requested by the other in connection with any communications with the government or regulatory agency (e.g. Therapeutic Goods Administration or other health authority, or Purchaser's Notified Body).
  - c. Prior to making any changes in the design, processes, methods, specifications, equipment, production systems, manufacturing site, relevant regulatory compliance status, ownership, or procedures relative to the manufacturing, packaging and/or labeling of the Product supplied to Purchaser, Seller must provide Purchaser with reasonable prior written notice of such change to allow Purchaser to assess the impact and obtain regulatory approvals if necessary; Seller must obtain Purchaser's prior written consent before implementing such change.
  - d. If Seller experiences a process shift or process excursion during the Seller manufacturing process such that there might be a potential impact to the quality of the Product supplied to Purchaser, Seller must immediately notify Purchaser. Seller must work with Purchaser to build the appropriate corrective and preventative actions and to determine disposition of the affected Product.

Except as otherwise provided by law, Purchaser will handle, process and respond to all customer complaints related to the Purchaser Finished Product, including complaints related to the Product supplied by Seller to Purchaser, for all markets. Purchaser and Seller must each maintain complaint files regarding the Product supplied to Purchaser, including, without limitation, any Product quality complaints, for such period as may be required by applicable laws. All complaints received by Seller relating to a Product provided to Purchaser, or relating to a product that is not specifically the Product provided to Purchaser but which is identical or materially similar in some particular way to the Product furnished to Purchaser, will be promptly forwarded, in no event later than 15 days after receipt thereof, to Purchaser for appropriate and timely reporting and response in accordance with applicable laws, including, but not limited to, adverse event reporting under regulation 5.7 of the *Therapeutic Goods (Medical Devices) Regulations 2002* (Cth) (**TGR**); provided, however, Seller must notify Purchaser of any adverse event and any serious adverse reaction, patient injuries, or device malfunctions, as defined in TGR or other applicable laws or regulations, pertaining to the Product, within 24 hours after receipt thereof. Seller agrees to cooperate with Purchaser to investigate and resolve all complaints and to take remedial action to avoid similar complaints in the future. This Section survives the expiration or

termination for whatever reason of Purchase Order or this GTP. Seller must also at all times comply with Alcon's Alcon PV policy (available on Alcon's website or by request from Alcon), as updated by Alcon from time to time.

- 16. Force Majeure.** Neither Purchaser nor Seller is liable to the other for any failure nor delay in performance under this GTP to the extent said failures or delays are caused by causes beyond that party's reasonable control and occurring without its fault or negligence. Strikes, lockouts and other labor related disputes are not regarded as an event beyond a party's reasonable control. The Purchaser and Seller will meet and confer in good faith to determine the best solution to limit the consequences of any force majeure event. Notwithstanding the foregoing, to the extent that either Purchaser's or Seller's performance hereunder is delayed by a force majeure event for more than one month, the other party may immediately terminate this GTP upon written notice to the party whose performance is so delayed.
- 17. Assignment and Subcontracting.** Purchaser may assign, transfer, novate or subcontract its obligations and/or rights under this GTP. Seller may not assign, transfer, novate or subcontract any of its rights or obligations under this GTP without the prior written consent of Purchaser. Any attempted assignment, transfer, novation or subcontract in violation of these restrictions is void.
- 18. Setoff.** All claims for money due or to become due from Purchaser are subject to deduction or setoff by the Purchaser by reason of any counterclaim arising out of this or any other transaction with Seller.
- 19. Waiver.** The failure of a party to insist upon strict adherence to any term of this GTP on any occasion is not considered a waiver nor does it deprive that party of the right to insist upon strict adherence to that term or any other term of this GTP. Any waiver must be in writing and signed by the party making the waiver.
- 20. Governing Law.** This GTP is governed by and construed in accordance with the substantive and procedural laws of New South Wales, Australia, and the parties submit to the non-exclusive jurisdiction of the courts of New South Wales (without regard to conflict of law principles). Purchaser and Seller agree that, to the extent that the United Nations Convention on Contracts for the International Sale of Goods would otherwise apply to this GTP or a Purchase Order, that convention is expressly and wholly excluded and does not apply.
- 21. Entire Agreement.** This GTP represents the entire agreement and understanding of the Purchaser and Seller relating to the subject matter of the GTP, and supersedes all documents and verbal consents or understandings (if any) given or made between the Purchaser and Seller in relation to the subject matter hereof. Any standard terms and conditions of Seller only apply to the extent that they are expressly acknowledged in this GTP. The terms of this GTP (including this provision) may only be amended and modified in writing signed by both Purchaser and Seller.
- 22. Costs and Attorney's Fees.** In any action or proceeding brought to enforce any provision of this GTP or where any provision hereof is validly asserted as a defense, the successful party must, to the extent permitted by applicable laws, be entitled to recover reasonable costs and legal fees in addition to any other available remedy. This clause does not limit any other right or remedy that may be available to a party, whether under this GTP or otherwise at law.
- 23. Severance.** If any provision of this GTP or a Purchase Order is or is found to be void, invalid or unenforceable in any jurisdiction, then that provision must be read down in that jurisdiction to the extent necessary so that it is valid and enforceable and, if it cannot be so read down, is severed from this GTP or the Purchase Order in that jurisdiction to the extent that it is void, invalid or unenforceable, and this GTP and the Purchase Order otherwise continue in full force and effect.