

Terms and Conditions of Sale

Alcon Laboratories (Australia) Pty Ltd

ABN 88 000 740 830

1. ABOUT THESE CONDITIONS

- (a) (These Conditions apply to orders for Goods) These terms and conditions (Conditions) apply to all requests and orders for the sale by Alcon in Australia of all Goods offered for sale by Alcon in Australia. This includes medicinal, medical device and accompanying products.
- (b) (No other terms apply) These Conditions apply to the exclusion of all other terms and conditions which the Customer submits or purports to apply whether by way of a separate purchase order, confirmation of order or other document.
- (c) (These Conditions may be varied) These Conditions can only be amended or replaced:
 - (i) by written agreement of both parties; or
 - (ii) on Alcon giving no less than 30 days' written notice to the Customer. If the Customer is not satisfied with such amended or replaced Conditions, then the Customer can terminate these Conditions on 30 days' written notice to Alcon. Such termination will not affect any current 'Order' or separate 'Contract' – each of these expressions are defined.

2. ORDERS

- (a) (Placing an Order) All Orders must be placed in the manner and form required by Alcon from time to time. An Order will only be accepted by Alcon subject to the following further conditions:
 - (i) Alcon may audit any site where the Goods are to be stored, handled, used or sold before accepting any Order;
 - (ii) the Customer is authorised to use, deal in or resell the Goods in Australia;
 - (iii) Alcon may specify a minimum order quantity and minimum order value;
 - (iv) Alcon may cancel or vary any Order; and
 - (v) the Customer may only cancel an Order on obtaining Alcon's prior written consent.
- (b) (Alcon has discretion to accept an Order) The placement of an Order by the Customer with Alcon constitutes an offer subject to these Conditions, which Alcon may accept in whole or in part at its discretion.
- (c) (Formation of a Contract) Upon acceptance of each Order by Alcon, a separate contract (Contract) will be formed between Alcon and the Customer.
- (d) The Customer shall purchase all of its needs for Goods exclusively from Alcon or an Alcon-authorized distributor.

3. PRICE

- (a) (Price list) Unless the Contract states otherwise, the selling price for Goods is the price specified in Alcon's price list valid on the date of acceptance of the Order (Price). Alcon reserves the right to update or amend its price list from time to time by written notice to the Customer.
- (b) (Taxes and other charges and amounts) Unless the Contract states otherwise, the selling price of the Goods does not include any GST or other taxes, customs duty, freight or delivery charges or insurance. These amounts (if applicable) will be charged to the Customer in addition to the Price.

4. PAYMENT AND INVOICING

- (a) (Invoicing) Goods will be invoiced on dispatch or at a later time determined by Alcon.
- (b) (Timing for payment) Unless the Contract states otherwise, the Customer must pay for the Goods no later than 30 days after the end of the month in which the invoice is issued.
- (c) (Earlier payment may be required) Alcon may require the Customer to pay for the Goods on or before dispatch or earlier than the date specified in clause 4(b). At its option, Alcon may also require or allow payment by direct debit or credit card.
- (d) (No deduction) The Customer must not withhold payment or make any deduction from the invoiced Price.
- (e) (Allocation payments to outstanding invoices) Alcon may in its discretion allocate a payment that does not specifically identify an invoice for which such payment is made in satisfaction of any amounts owed by the Customer under any outstanding invoices without regard to the date of those invoices.
- (f) (Interest on overdue amounts) Alcon may charge interest on all overdue amounts. The interest rate will be 4% above the Reserve Bank of Australia's cash rate (from time to time) calculated from the due date of payment until the actual date of payment.
- (g) (Payment obligation on termination) Despite any other provision, any payments to be made to Alcon will become immediately due and payable upon termination of a Contract.

5. DELIVERY AND INSPECTION

- (a) (Delivery) Delivery occurs when possession or control of the Goods passes to the Customer, or its agent or carrier, at the delivery location specified in the Contract.
- (b) (Estimated delivery time) Any time or date for delivery of the Goods specified in a Contract is an estimate only.
- (c) (Efforts to supply with specifications) Alcon will use reasonable endeavours to supply the Goods according to any specification in a Contract but will not be responsible or liable for any delay or failure to deliver the Goods on time or in requested quantities.
- (d) (Delivery may be by instalments) Alcon reserves the right to deliver the Goods by instalments. Each instalment may be invoiced separately and will be deemed to be a separate contract subject to these Conditions.
- (e) (Shipping) Unless stated in a Contract or these Conditions, all Goods will be shipped "free into store" throughout Australia. (Charges for delivery of certain Orders) Orders for \$200 or less (excluding GST) or for express or expedited delivery, including same day, time-sensitive or air-freight services, may incur freight, administration and handling charges as notified to the Customer from time to time.
- (f) (Customer to inspect) The Customer must inspect the Goods on or as soon as practicable after their delivery. To the fullest extent permitted by law, Alcon is not responsible or liable for any shortage, damage or other error in delivery unless it receives for its consideration a detailed written claim within 7 days of the date of delivery of the Goods. On receipt of a written claim by the Customer, Alcon may request the Customer to offer up any damaged Goods for collection by Alcon or its carrier within 48 hours of its receipt of that claim. The Customer must retain the packaging and labels of all Goods subject to a claim and, at the request of Alcon, photographic and other evidence of any shortage, damage or other error in delivery.

6. RISK AND TITLE

- (a) (Risk) Risk in the Goods passes to the Customer when the Goods are delivered to the nominated delivery address.
- (b) (Title) Unless otherwise agreed by Alcon, title in the Goods passes to the Customer when Alcon is paid in full for all Goods subject to a Contract and for any other goods or services it has supplied to the Customer under any other agreement.
- (c) (Customer obligations until title passes) Until title in the Goods passes to the Customer, the Customer must:
 - (i) hold the Goods on Alcon's behalf;
 - (ii) store the Goods so that they can be identified as Alcon's property; and
 - (iii) keep the Goods insured against loss, theft, damage and destruction.
- (d) (Dealing with proceeds if a resale occurs before title passes) If the Customer resells the Goods in the ordinary course of its business before title has passed:
 - (i) it must account to Alcon for so much of the proceeds of sale as represent any amount it owes to Alcon; and
 - (ii) hold all such proceeds on trust for Alcon and in a separate bank account.
- (e) (Dealing with certain items such as display items) Any trial contact lens racks and packs, containers or other display items issued to the Customer in connection with the Goods must be kept intact and in good working order. Such items will remain the property of Alcon and must be returned to Alcon on request and at any time.

7. DEFAULT AND TERMINATION

- (a) (Material default by Customer) If there is material default by the Customer under these Conditions, Alcon may, without limiting any other right or claim it may have against the Customer, immediately:
 - (i) withhold delivery of any Goods ordered by the Customer; and
 - (ii) cease to supply Goods to the Customer.
- (b) (Examples of a material default by Customer) A material default by the Customer includes any one or more of the following, namely the Customer:
 - (i) does not pay Alcon by the due date;
 - (ii) fails to take delivery of the Goods as ordered;
 - (iii) exceeds its credit limit at any time and fails to pay its account within 14 days of Alcon's request;
 - (iv) commits a breach of these Conditions which remains unremedied after 10 days of Alcon's request to remedy the breach; or

- (v) becomes insolvent, is declared bankrupt, is unable to pay its debts as they become due or any step or proceeding is taken which could lead to its liquidation or winding up under insolvency laws in Australia or if it makes an assignment for the benefit of creditors or applies for or consents to the appointment of a trustee or receiver for any portion of its property.
- (c) (Alcon's rights if there is a material default by Customer) Without limiting its rights under clause 7(a), if the Customer is in material default Alcon may take one or more of the following actions:
 - (i) (credit limit) vary or withdraw any approved credit limit;
 - (ii) (discounts and rebates) cancel any rebate, discount or allowance due to or payable by Alcon as at the date of the event;
 - (iii) (Orders) refuse to accept any future Orders;
 - (iv) (Contracts) cancel or suspend any unfulfilled Contracts;
 - (v) (termination) terminate these Conditions in which case all unfulfilled Contracts are cancelled; and
 - (vi) (reclaiming possession of Goods) enter (at any time) any premises occupied by the Customer or its agents at which Alcon's Goods are stored and reclaim possession of those Goods. The Customer indemnifies Alcon from and against any claims, losses or costs arising from any action taken by Alcon pursuant to this clause 7.
- (d) (Termination by the Customer) The Customer may terminate a Contract if Alcon:
 - (i) commits a material breach of these Conditions which remains unremedied after 10 days of the Customer's request to remedy the material breach; or
 - (ii) becomes insolvent, is declared bankrupt, is unable to pay its debts as they become due or any step or proceeding is taken which could lead to its liquidation or winding up under insolvency laws in Australia or if it makes an assignment for the benefit of creditors or applies for or consents to the appointment of a trustee or receiver for any portion of its property.
- (e) (Cancelling and terminating Contracts) On the cancellation and termination of a Contract:
 - (i) all amounts owing by the Customer are immediately due and payable; and
 - (ii) the Customer must immediately return to Alcon or its nominated representative any Goods which have been delivered but not paid for. The Customer must also return any material, documentation, promotional materials or other information given by Alcon to the Customer.

8. RETURNS

- (a) (No unauthorised return of Goods) For security and safety reasons, Alcon does not accept unauthorised returned Goods. Any unauthorised returns delivered to Alcon may be destroyed immediately without investigation. No compensation will be provided in such circumstances.
 - (b) (Authorised return of Goods) To be authorised for return, Goods must be:
 - (i) accompanied by a Return Authorisation Number (RAN), giving Alcon notification of the quantity, product and batch/lot/serial number (where applicable) of the Goods;
 - (ii) unless otherwise agreed by Alcon, in their original packaging, unopened, unmarked, in saleable condition, in their original unbroken shipping units and not over labelled or marked in any way; and
 - (iii) packaged, identified and marked in accordance with Alcon's written instructions which will include the need for compliance with all applicable codes and guidelines relating to safe carriage and handling.
- Alcon may reject any Goods that do not comply with this clause 8(b) unless Alcon has requested the return or the Goods were defective at the time of delivery.
- (c) (Obtaining a RAN) A RAN is available by contacting Alcon's customer service team. The issue of a RAN to the Customer does not automatically mean the returned Goods will be accepted by Alcon or a credit will be applied.
 - (d) (Responsibility for return of Goods) The Customer is responsible for all costs and risks of delivery for the return of Goods. If however Alcon agrees that the Goods are defective or incorrectly supplied then Alcon will pay the costs and bear the risks for return of the Goods. If the Customer returns non-defective Goods that are accepted by Alcon, Alcon reserves the right to charge a reasonable re-stocking fee.
 - (e) (Limits on return of Goods) Subject to any rights or guarantees under the ACL, Goods are not returnable and the Customer will not be entitled to a refund if the Goods:
 - (i) (incorrect order) were incorrectly ordered by the Customer;
 - (ii) (temperature control) required refrigeration or temperature control during and after their delivery unless Alcon is otherwise satisfied the Goods have been properly stored;
 - (iii) (third party) were purchased from a third party and not directly from Alcon;
 - (iv) (insolvency) are involved in a bankruptcy, liquidation or other product sacrifice sale;
 - (v) (CUSTOM-PAK) are individual components of a CUSTOM-PAK™;
 - (vi) (capital equipment) are or include capital equipment such as surgical machines and accessories, including video overlays and hand pieces;
 - (vii) (expiry dates) have passed their expiry date or will do so within a period specified by Alcon including in the case of:
 - (A) formulated products, contact lens care solutions, BSS® and BSS Plus®, where a minimum of 12 months before the specified expiry date is required for return; and
 - (B) surgical products, where a minimum of 4 months before the specified expiry date is required for return.
 - (f) (Specific exceptions for disposable contact lenses)
 - (i) Under Alcon's 100% Patient Satisfaction Guarantee, opened disposable contact lenses can be returned to Alcon within 60 days of the original invoice date for a full credit if the Customer can establish that a patient/customer was not completely satisfied with the Goods (this exception excludes FRESHLOOK® contact lenses).
 - (ii) Disposable contact lenses can be returned to Alcon for full credit if received within 60 days of the original invoice date and if they are unopened, unmarked, and in a resaleable condition. Any contact lenses purchased with bonus stock will be credited at the net price as per the original invoice.
 - (iii) Disposable contact lenses purchased as part of an inventory order can be returned to Alcon and exchanged for another contact lens of an equivalent value (or more, if agreed by Alcon). Such returns will only be accepted if unopened, unmarked, in a resaleable condition, and with at least 3 months until expiry.

9. STORAGE AND HANDLING

- (a) (Storage and handling) The Customer must ensure all applicable health and safety regulations, therapeutic goods requirements, instructions for use and Alcon guidance are observed and any other required steps are taken in relation to the storage, handling, sale and use of the Goods after they are delivered to the Customer. The Customer must also provide safe facilities for the reception of Goods into storage. (Notification of hazards) If information is supplied to the Customer on actual and potential hazards relating to the Goods from any reputable source, it must bring such information to the attention of its Personnel, sub-contractors, customers and anyone else likely to be exposed or to come into contact with the Goods. The Customer must also immediately inform Alcon in writing.
- (c) (Access to sites by Alcon representatives) With the prior consent of the Customer (which will not be unreasonably withheld or delayed), Alcon may send its authorised representative(s) at all reasonable times to any of the Customer's sites to inspect the Customer's stocks of Goods and any procedures the Customer has in place for their safe handling.
- (d) (Terms applicable to Hydrus Microstent)
 - (i) Hydrus Microstent shall only be administered or utilized by healthcare practitioners who have been formally trained by Alcon and/or by a healthcare practitioner who has been authorized by Alcon on administration or utilization of the products.
 - (ii) Under no circumstance shall Customer permit any third party to have access to Hydrus Microstent products without explicit written permission from Alcon.
 - (iii) Customer responsibilities include:
 - (A) not attempting to provide clinical training regarding the Hydrus Microstent;
 - (B) not utilizing any marketing materials featuring the Hydrus Microstent, other than those materials formally provided by Alcon;
 - (C) not promoting off-label use; and
 - (D) referring any enquiries regarding off-label use to **Medical Product Information** (australia.auff-medical_information@alcon.com).

10. USE AND RESALE

- (a) (Use in Australia) Goods purchased in Australia may only be used or resold in Australia. The Customer must not resell the Goods to anyone that it knows or ought to know will or may export the Goods.
- (b) (Own premises) The Customer will only sell and deal with the Goods from premises shown on the Customer's application for an account or Order or from premises previously notified to Alcon and agreed in writing.
- (c) (Alcon's investment) The Customer acknowledges that the Goods as supplied by Alcon are technically sophisticated premium products and as such are intended to be sold in environments and by trained staff so as to reflect the nature and purpose of the Goods and Alcon's own investment in product development, product support and quality assurance.
- (d) (Representations about the Goods) If the Customer supplies Goods to another person in the course of trade, the Customer must not give any undertaking or make any representation in relation to the Goods other than any information which appears on any label or publication issued or approved by Alcon or which is otherwise subject to Alcon's prior written approval.
- (e) (Representations, laws and other requirements) The Customer must not make any representations or sell, promote or advertise the Goods in any way contrary to any laws including any health and safety laws and regulations and therapeutic goods requirements and must not sell, promote or advertise the Goods in any way which promotes or suggests the unauthorised use of medical devices or other therapeutic products.

- (f) (Use of samples) All free of charge samples provided to the Customer are not for resale to anyone including the Customer's patients and must be distributed free of charge.
- (g) (Alcon's directions and instructions) The Customer will comply with any directions and instructions Alcon gives in relation to the proper and safe use of the Goods and will take all other actions necessary to ensure patients/customers also observe those directions and instructions (e.g. once only use of single use products and other safety directions).

11. PARALLEL IMPORTS & EXPORTS

The Customer covenants and agrees that it shall not, directly or indirectly:

- (a) Distribute or sell any Goods in Australia that were intended for distribution or sale outside Australia;
- (b) Distribute or sell any Goods outside Australia;
- (c) Solicit orders for Goods, purchase Goods, advertise Goods or keep stock of Goods outside Australia; and
- (d) Distribute, market or sell Goods to any person within Australia if there is reason to believe that such Goods will be resold by such person or entity, directly or indirectly, outside Australia.

If the Customer becomes aware that any person or entity to whom it supplies any Goods is marketing or selling, or is planning to market or sell, Products outside Australia, the Customer agrees to give immediate notice to Alcon and immediately cease to supply such person or entity with Goods.

12. REPACKAGING AND LABELLING

(Original packaging and no alteration) Unless the Contract states otherwise, the Customer may only resell Goods in their original selling packs supplied by Alcon without any breaking down or repackaging. As part of this, the Customer must not:

- (a) alter, deface, destroy or obscure any trade mark, brand, label or instructions on the Goods or the packaging; and
- (b) add to or supplement the labels or instructions on the Goods or the packaging, without Alcon's prior written consent.

13. PRODUCT RECALL AND OTHER PROTECTIVE MEASURES

- (a) (Customer to notify) Any complaints or concerns about product quality and authenticity (e.g. counterfeits) or adverse events arising from use of the Goods which are brought to the attention of the Customer must be reported to Alcon within 24 hours of the Customer becoming aware of the complaint, concern or adverse event.
- (b) (Product recall) If any Goods are subject to a product recall (including a field safety or hazard alert) or are suspected to be counterfeits, Alcon will notify the Customer in writing setting out details of all categories of Goods affected and how the relevant Goods are to be handled and returned, including the need for strict compliance with the requirements set out in clause 8(b)(iii).
- (c) (Customer assistance) The Customer will take all necessary and reasonable steps to identify any person or parties who holds or may have used or consumed the Goods and co-operate with Alcon and any competent regulatory authority, and render any other assistance reasonably requested by Alcon, to ensure the recall of such Goods or the recovery of counterfeit goods is as effective as possible.
- (d) (Further protective measures) The Customer will comply with any direction or instruction by Alcon which Alcon considers necessary to protect or guarantee the integrity, safety and reputation of its Goods and to prevent any events or repetition of events giving rise to a recall or the sale and marketing of counterfeit goods. Such direction or instruction will at a minimum include a requirement that the Customer will only purchase Goods from Alcon direct and, if a reseller, the Customer only resells and deals in Goods supplied to it by Alcon.

14. SECURITY

- (a) (Registering a security interest) The Customer consents to Alcon doing anything reasonably necessary to protect its interest as owner of the Goods including registering a 'security interest' under the PPSA.
- (b) (Customer assistance) The Customer must co-operate fully with Alcon to ensure that the 'security interest' is perfected and enforceable, and will also provide any consents and waivers which Alcon requests under applicable provisions of the PPSA.

15. WARRANTIES

- (a) (Exclusion) Other than as specifically set out in these Conditions, a Contract or in an express warranty given to the Customer, all other warranties and conditions, including warranties and conditions implied by statute or law, are excluded to the fullest extent permitted by law.
- (b) (Therapeutic goods) Alcon warrants that if any of the Goods are 'therapeutic goods' for the purposes of the Therapeutic Goods Act 1989 (Cth), then such Goods are registered, listed and included (as the case may be) on the Australian Register of Therapeutic Goods.
- (c) (ACL) Goods may come with consumer guarantees that cannot be excluded under the ACL. If so, the Customer is entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. The Customer is also entitled to have the Goods repaired or replaced if the Goods fail to be of acceptable quality and the failure does not amount to a major failure. The Customer's rights under this clause are in addition to any statutory rights it may have as a consumer (as defined in the ACL).

16. INDEMNITY

(Indemnity in favour of Alcon) The Customer indemnifies Alcon, its related bodies corporate and its and their Personnel against any cost, expense, damage, judgment, liability or loss (including consequential loss, loss of profit and loss of expected profit) incurred directly or indirectly as a result of or in connection with any claim, demand or cause of action asserted or brought by any third party in relation to or arising from any negligent act or omission, unlawful conduct by the Customer or its Personnel relating to a Contract or the Goods.

17. LIMITATION OF LIABILITY

- (a) (Non-excludable provision) Nothing in these Conditions excludes, restricts or modifies any rights or remedies, or any guarantee, warranty or other term or condition, implied or imposed by any legislation that cannot be lawfully excluded or limited, including under the ACL (a Non-Excludable Provision).
- (b) (Limit on Alcon's liability) To the maximum extent permitted by law, Alcon's liability for a breach of any Non-Excludable Provision in relation to goods or services supplied to the Customer (including the Goods), is, at Alcon's option, limited to:
 - (i) replacing the goods; or
 - (ii) resupplying the services; or
 - (iii) paying the cost of supplying equivalent goods or services.
- (c) (No indirect loss) To the fullest extent permitted by the law, Alcon will not be liable to the Customer for any consequential, incidental, special or indirect loss or damage, including loss of profits, income or business, which may arise (including under contract, tort (including negligence), by operation of statute or otherwise under applicable laws) in connection with an Order, a Contract or these Conditions.

18. EVENTS BEYOND CONTROL

If, for any cause beyond Alcon's control, Alcon is delayed or cannot perform its obligations under a Contract, then Alcon is released from all its obligations under the Contract for so long as the event continues.

19. INTELLECTUAL PROPERTY

- (a) (No right to use Alcon IP) The Customer must not use any of Alcon's or its licensors' intellectual property rights (including logos and business names) unless authorised to do so by Alcon in writing.
- (b) (Customer not to use Alcon IP) No right, title, interest or licence in any of the intellectual property of Alcon, or its related bodies corporate, is granted to the Customer under these Conditions or a Contract.
- (c) (Alcon not giving any IP promises) Alcon gives no warranty or representation that Alcon products do not infringe any patent, trade marks, registered designs or other intellectual property rights of any third party, anywhere in the world.

20. CONFIDENTIALITY AND PUBLICITY

- (a) (Limit on use of Alcon images) The Customer must not, without the prior approval of Alcon, take or permit to be taken any photographs or images of facilities or any other property or Personnel of Alcon for use in any publicity, advertising or otherwise. If Alcon gives such consent, such photographs and images may be used only for purposes authorised by Alcon.
- (b) (Restriction on publicity) The Customer must not, without Alcon's prior written consent, make any public announcement or publish or circulate any other material (e.g. news releases) in relation to the Goods or its relationship with Alcon.
- (c) (Confidential Information) The Customer must not disclose to any third party any Confidential Information, except:
 - (i) to its employees or representatives requiring the information for the purposes of a Contract, provided they are made aware of these restrictions;
 - (ii) if the Customer is required to do so by law or by a stock exchange and first gives Alcon an opportunity to review any such disclosure; or
 - (iii) if the Customer is required to do so in connection with legal proceedings relating to the Goods or a Contract.

21. FORCE MAJEURE

- 21.1 Neither party will be liable for any failure or delay in performing an obligation under this Agreement that is due to any of the following causes, to the extent beyond its reasonable control: acts of God, accident, riots, war, terrorist act, epidemic, pandemic, quarantine, civil commotion, breakdown of communication facilities, breakdown of web host, breakdown of internet service provider, natural catastrophes, governmental acts or omissions, changes in laws or regulations, national strikes, fire, explosion, generalized lack of availability of raw materials or energy.
- 21.2 For the avoidance of doubt, Force Majeure shall not include (a) financial distress nor the inability of either party to make a profit or avoid a financial loss, (b) changes in market prices or conditions, or (c) a party's financial inability to perform its obligations hereunder.

22. GENERAL

- 22.1 (Assignment) The Customer cannot assign a Contract in whole or part without the written consent of Alcon. Alcon may freely assign its rights under a Contract.
- 22.2 (Notices) Notices, consents and other communications in connection with a Contract must be in "writing" and hand-delivered or sent by pre-paid post to the other party's representative identified in the Contract. Notices take effect as follows:
- (a) hand-delivery – at the time the delivery is made; and
- (b) notices sent by pre-paid post – 2 business days after posting.
- 22.3 (Severance) If any provision in these Conditions is held to be void, unenforceable or illegal it will be severed from these Conditions and all other provisions will remain in full force and effect.
- 22.4 (Relationship) These Conditions do not create a relationship of exclusivity, employment, agency or partnership between the parties.
- 22.5 (Approvals and consents) Unless otherwise provided, Alcon may in its discretion give (conditionally or unconditionally) or withhold any approval or consent under these Conditions.
- 22.6 (Entire agreement) These Conditions and, where applicable, each Contract constitute the entire agreement between the parties about their subject matter and supersede any prior understanding or agreement.
- 22.7 (Waiver) The failure, delay, relaxation or indulgence by a party in exercising a power or right under these Conditions or a Contract is not a waiver of that power or right and does not preclude a further exercise of it or the exercise of another right or power.
- 22.8 (Survival) Each indemnity, obligation of confidence and other term capable of taking effect after the expiration or termination of a Contract remains in force after the expiration or termination of these Conditions.
- 22.9 (Further action) Each party must do all things necessary to give full effect to these Conditions and each Contract.
- 22.10 (Governing law) These Conditions are governed by the laws in force in New South Wales. The parties submit to the exclusive jurisdiction of the courts of New South Wales and the Commonwealth of Australia.
- 22.11 (Dispute Resolution) Nothing in these Conditions prevents a party seeking urgent injunctive or similar interim relief from a court. If a dispute arises between the parties in connection with a Contract, the parties undertake to use all reasonable endeavours to settle the dispute by way of good faith negotiation (including escalating the dispute to executive level).

23. DEFINITIONS AND INTERPRETATION

- 23.1 (Definitions) In these Conditions and each Contract, unless the context otherwise requires:
- (a) ACL means the Australian Consumer Law which comprises Schedule 2 to the Competition and Consumer Act 2010 (Cth);
- (b) Alcon means Alcon Laboratories (Australia) Pty Ltd ABN 88 000 740 830;
- (c) Confidential Information means all confidential, non-public or proprietary information, regardless of how the information is stored or delivered, exchanged between the parties relating to Alcon's business, technology or other affairs and includes the Contract and any pricing arrangements or discounts discussed or agreed by the parties;
- (d) Customer means the entity responsible for placement of the relevant Order or identified as the 'Customer' in the Contract;
- (e) Goods means any contact lenses, lens care, ophthalmic or optical pharmaceutical or surgical products provided or to be provided pursuant to any Contract and any services (including software) provided or to be provided by Alcon to the Customer in conjunction with such items;
- (f) Order means any Order for the purchase or supply of Goods placed by the Customer with Alcon;
- (g) Personnel of a party includes a director, officer or employee of that party; and
- (h) PPSA means the Personal Property Securities Act 2009 (Cth).
- 23.2 (Interpretation) In these Conditions and each Contract, unless the context otherwise requires:
- 23.2.1 (plural) words in the singular include the plural and vice versa;
- 23.2.2 (headings) headings are for convenience and do not affect the interpretation of these Conditions or a Contract;
- 23.2.3 (parts of Conditions and a Contract) a reference to a clause, paragraph or annexure is a reference to a clause, paragraph or annexure of these Conditions or a Contract (as the case may be);
- 23.2.4 (business day) if any act which must be done is to be done on a day that is not a business day then the act must be done on or by the next business day;
- 23.2.5 (legislation) a reference to any legislation includes subordinate legislation and all amendments, consolidations or replacements from time to time;
- 23.2.6 (person) a reference to a natural person includes a body corporate, partnership, joint venture, association, government or statutory body or authority or other legal entity;
- 23.2.7 (includes) "includes" and similar words mean "includes without limitation";
- 23.2.8 (no disadvantage to drafter) no clause will be interpreted to the disadvantage of a party merely because that party drafted the clause or will otherwise benefit from it;
- 23.2.9 (party) a reference to a party includes the party's legal personal representatives, successors, assigns and persons substituted by novation; and
- 23.2.10 (AUD) a reference to "\$" or "dollars" is to Australian dollars.