

ANNEX 1

Consignment Stock Agreement

1 Definitions

- 1.1 **"Business Day"** a day other than a Saturday, Sunday or public holiday in England.
- 1.2 **"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 for the Customer to sell.
- 1.3 **"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.
- 1.4 **"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.
- 1.5 **"Pricing Agreement"** means [the net discounted pricing agreement between Alcon and the Customer dated [XXXXXX] as amended from time to time].
- 1.6 **"Purchase Order"** means a purchase order substantially in the form set out in Schedule 2, issued by the Customer to Alcon to Replenish the Consignment Stock.
- 1.7 **"Replenish"** or **"Replenishment"** means the process by which the Customer will order replacement Consignment Stock and pay for Consignment Stock it has used.
- 2.4 All Purchase Orders issued by the Customer to Replenish the Consignment Stock shall at a minimum include details of product type, quantity, price, Purchase Order number, serial number(s) or batch numbers and Customer account number.
- 2.5 In addition to the terms of this Agreement, the Customer agrees that the Alcon General Conditions of Sale shall be incorporated into this Agreement. **note:** Alcon's t&c must be sent with these terms (please delete before printing)
- 2.6 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 clearly stating the Purchase Order number for such Consignment Stock and referencing that such are Consignment Stock.
- 2.7 Alcon representatives and Customer representatives will every three (3) months (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 expiry date and minimise waste:

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. or prices as set out in the Pricing Agreement.
- 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 Within five (5) Business Days of the use by the Customer of Consignment Stock, the Customer shall raise a Purchase Order to Replenish the Consignment Stock and Alcon shall raise and issue to the Customer an invoice for the sale of such Consignment Stock to the Customer.
- (a) that Consignment Stock which has nine (9) months or less unexpired shelf life are identified to the Customer and for Alcon's records. Alcon's representatives will attach stickers to that Consignment Stock with nine (9) months or less unexpired shelf life in order to identify such Consignment Stock to the Customer so that it is used first;
- (b) that Consignment Stock with between nine (9) and fifteen (15) months of unexpired shelf life shall be used second;
- (c) that Consignment Stock that has more than fifteen (15) months of unexpired shelf life should be used as a third priority.
- If requested by the Customer, Alcon shall make available a report of the relevant Consignment Stock identified pursuant to this clause 2.7;
- (d) that Consignment Stock levels are adequate as determined by Alcon in its sole discretion, to provide for the Customer'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.

- (d) For the avoidance of doubt, 2.7(a) - (c) operate to ensure that the Customer's Consignment Stock usage is occurring on a First Expire First Out basis.
 - (e) 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.
 - (f) quality and condition of the Consignment Stock and their conditions of storage.
- 2.8 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.
- 2.9 If the Customer wishes to return Alcon Consignment Stock to Alcon, it 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 Consignment Stock, in its sole discretion. The Customer shall return to Alcon the Consignment Stock which has not less than one (1) month/ four (4) weeks of unexpired shelf life, using a tracked and secure method of delivery, so that Alcon receives the returned Consignment Stock before the stated expiry date. Alcon will provide the address for returns to the Customer. For the avoidance of doubt, replacement of that expired Consignment Stock is at the discretion of Alcon.
- 2.10 The Customer shall bear the risk of loss and any expense of returning any Consigned Stock pursuant to clause 2.9.
- 2.11 In the event that Alcon has accepted to receive a return pursuant to clause 2.9 above, the Customer shall notify Alcon three (3) Business Days before it sends any Consignment Stock back to Alcon. The Customer must email Alcon using: gb.lensbank@alcon.com. 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.
- 2.12 Alcon will work with the Customer to plan future ordering based on previous usage levels, in order to ensure the Customer's bank of Consignment Stock is appropriate for their requirements. The Customer shall pay to Alcon the price for any Consignment Stock which is returned with unexpired shelf life of less than one (1) month/four (4) weeks. The Customer shall pay for such Consignment Stock within thirty (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.

- 2.13 The Customer shall provide at least fourteen (14) Business Days' prior written notice to Alcon of any change to the Facility's address.

3 Price and Payment Terms

- 3.7 The price of the Consignment Stock shall be . the price as set out in the Pricing Agreement. All prices for the Consignment Stock shall be subject to alteration without prior notification.

- 3.8 Invoices are due for payment, and the credit date is, the date specified on the invoice issued by Alcon or if no such date is stated, thirty (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.

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. The Customer remains fully responsible for correct storage, Alcon will make no provision or contribution to the Customer for means of storage.

- 4.2 The Customer shall handle and store the Consignment Stock with all due care and skill so as to maintain Consignment Stock in the same condition as on delivery to the Customer. The Customer will 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 Alcon) held by the Customer in an area separated from the rest of the Facility so that the Consignment Stock remains readily identifiable 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 The Parties agree that Alcon and its authorised representatives shall be entitled (and in any event no less than every three (3) months) on the giving of reasonable notice, to audit the Facility; including but not limited to the verification of the contents and quantity of the Consignment Stock.

- 4.5 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.

4.6 The Customer shall cooperate fully with any such inspections or audits pursuant to clauses 2.7 and 4.4.

4.7 If requested, the Customer shall make available to Alcon during the course of an inspection or audit pursuant to clauses 2.7 and 4.4, all records and reports relating to the Consignment Stock and allow its representatives to have access to them and to take copies as required.

4.8 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 by Alcon to the Customer pursuant to clause 3.2.

5 Title and Risk and Insurance

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 FCA 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 expiry date shall remain with Alcon.

5.4 The Customer shall insure the Consignment Stock against loss or damage due to fire, flood, theft and other such risks.

6 Term and Termination

6.1 This Agreement shall commence as of the date of signature by the parties as specified on the letter and shall remain in force until the first anniversary of the date of this Agreement when it shall terminate automatically without notice, unless renewed on provision of three (3) months prior written notice or 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 three (3) month's written notice to the other.

6.3 On termination of this Agreement howsoever 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 Law and Jurisdiction

7.1 This Agreement and any dispute or claim (including non-contractual dispute or claims) arising out of or in connection with its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

7.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Agreement or its subject matter or formation.

