

TERMS AND CONDITIONS OF PURCHASE

1. Definitions. As used herein, the term “Order” means the terms and conditions set forth on the face and reverse side of this purchase order, all specifications, blueprints, drawings and data submitted to Seller with this purchase order or referred to by this purchase order, and any documents attached to the purchase order; the term “Buyer” means Alcon Industries, Inc.; the term “Seller” means the seller of the Material and Services furnished under this Order; the term “Material” means the goods, equipment, products, supplies, parts and other items furnished under this Order; and the term “Services” means the services, labor and other work furnished under this Order, and the term “Delivery Date” means the delivery date specified in this Order.

2. Acceptance. Seller shall be deemed to have accepted the terms and conditions of this Order when: (a) Seller executes and returns the acknowledgment copy of this Order, (b) Seller evidences (in any manner) its acceptance of this Order, or (c) Seller delivers to Buyer the Material or Seller commences performance of the Services. Buyer’s issuance of this Order is expressly conditioned on Seller’s acceptance of the terms and conditions set forth herein, and but for Seller’s acceptance of the terms and conditions set forth herein Buyer would not consummate the transaction(s) evidenced by this Order. Any additional and/or different terms proposed by Seller or contained in Seller’s sales forms (including, but not limited to, any of Seller’s order acknowledgments, price quotations, etc.) are hereby deemed to be material alterations to this Order, and notice of objection to such additional and/or different terms and rejection of the same is hereby given by Buyer.

3. Delivery; Performance. Seller shall deliver the Material and perform the Services at the times and in the manner specified in this Order. Delivery dates and performance dates specified are of the essence of the Order. Buyer’s acceptance of late or defective deliveries or performance shall not limit or waive any rights or remedies Buyer has or may hereafter have against Seller hereunder, as a matter of law, or otherwise. Seller shall not be liable to Buyer for delays in delivery and/or performance to the extent such delays are due to acts of God, storms, fires, floods, wars, riots or acts of any governmental body, regulatory agency or judicial authority but only if Seller (a) notifies Buyer (in writing) of such delay within twenty-four (24) hours after the occurrence of the event causing the delay, (b) provides Buyer with a written remedial plan of action (satisfactory to Buyer) within seven (7) calendar days of such event and (c) allocates all available resources for the performance of this Order. Ownership in and title to the Material shall transfer to and vest in Buyer upon delivery of the Material to Buyer; provided, however, that risk of loss, destruction (in whole or in part), theft, damage or deterioration to the Material shall not pass to and be assumed by Buyer until Buyer remits final payment of the purchase price for the Material.

4. Payment; Taxes. Unless otherwise agreed by Buyer in writing or otherwise stated in this Order, net invoices shall be paid within thirty (30) days after the invoice date or within thirty (30) days after the Material delivery date, whichever is later. If an invoice contains

a discount provision, the discount period shall commence on the Material delivery date or the invoice date, whichever is later. Seller hereby assumes the liability under all Federal, State and other laws imposing taxes on the manufacturer or sale of the Material and the provision of Services, and shall pay any and all such taxes, except as otherwise expressly agreed (in writing) by Buyer. Any taxes to be paid by Buyer must be separately stated on Seller's invoice.

5. Advance Payments. If the purchase price for the Material is paid prior to delivery of the Material, title to said Material shall immediately vest in Buyer; the Material shall be subject to removal by Buyer at any time upon demand by Buyer; and Seller shall mark or otherwise clearly identify the Material as Buyer's sole and exclusive property. Seller shall take such action and sign such documents (including, but not limited to, security agreements and financing statements) as Buyer deems necessary to protect and perfect Buyer's interest in said Material. Seller shall exercise reasonable care over any said Material in its care, custody and/or control until such time as said Materials have been delivered to Buyer.

6. Early Delivery. If Seller tenders the delivery of the Material more than fourteen (14) days prior to the Delivery Date, Buyer shall have the right (in its absolute discretion) to either: (a) accept delivery when tendered but postpone payments (less Seller's normal discount terms) on such early delivery until the date payment would have been due had delivery not been made until the Delivery Date, or (b) refuse to accept delivery without any liability or cost whatsoever for any loss, damage or expense incurred or sustained by Seller in having the Material returned to its plant or warehouse and re-shipping at the Delivery Date or in storing such Material locally and then re-delivering the same at the Delivery Date.

7. Inspection; Acceptance. Buyer shall have a reasonable time, not less than thirty (30) business days, within which to inspect the Material and/or Services and shall not be obligated to inspect Material purchased for future use until the same are put to use by Buyer. Buyer's inspection or failure to inspect shall not limit or waive any rights or remedies Buyer has or may hereafter have against Seller. Buyer shall have the right to reject or revoke its acceptance of any Material and/or Services which are defective or which fail to conform with the terms and conditions of this Order. Material rejected or not accepted by Buyer will be returned to Seller for full credit or replacement at Buyer's sole option and at Seller's risk and expense, including (but not limited to) transportation and insurance costs. No replacement of rejected Material shall be made unless specified by Buyer in writing. Payments by Buyer to Seller shall not constitute an acceptance of Material and/or Services which are defective or not in accordance with the terms and conditions of this Order and such payments shall be deemed to have been made without prejudice to any and all rights or remedies Buyer has or may hereafter have against Seller hereunder, as a matter of law or otherwise, including (but not limited to) Buyer's right to reject Material and/or revoke its acceptance of the Material. Buyer shall not be liable for failure to accept any part of the Material and/or Services if such failure is a result of any causes beyond the control of Buyer, including (but not limited to) fires, floods, acts of God, strikes, casualties, acts of any governmental body, regulatory agency and/or judicial authority, delays in transportation, shortages, inability to obtain necessary materials or machinery or a total or partial shut-down of Buyer's plant for any cause. Acceptance of any part of the Material and/or Services shall neither bind Buyer to accept future shipments or additional Services nor deprive

Buyer of the right to return Material already accepted. Acceptance of all or any part of the Material and/or Services shall not be deemed to be a waiver of Buyer of any rights or remedies Buyer has or may hereafter have against Seller hereunder, as a matter of law or otherwise.

8. Warranties. In addition to any other warranties of Seller set forth in this Order, Seller represents and warrants to Buyer that all Material and Services: (a) shall strictly conform to any and all directions, descriptions, specifications, blueprints, instructions, plans, designs, drawings, samples and other information furnished to Seller or set forth in this Order; (b) shall be merchantable and suitable and fit for the purpose ordered (including any special requirements of Buyer which have been disclosed to Seller); (c) shall be of good quality and workmanship and are free from defects in workmanship, material, design and title; (d) shall be provided and furnished in a diligent and workmanlike manner, with employees who are skilled, experienced and competent and in accordance with the terms and conditions of this Order; (e) shall be new and unused; and (f) shall not and will not violate or infringe any patent, copyright, trademark, trade secret or similar right. Seller's warranties and representations hereunder shall be in addition to those implied by law and shall survive any inspection, acceptance or payment by Buyer; any use or consumption of the Material or performance of the Services; and any termination of this Order by any Party, for any reason and with or without cause. If the Services and/or Material are found by Buyer to be defective in any respect or not in accordance with the terms and conditions of this Order in any respect, Seller shall promptly correct said Services and/or Materials (at Seller's own cost and expense) upon receipt of written notice from Buyer to do so.

9. Indemnification; Assumption of Risk; Limitation on Liability; Force Majeure. To the fullest extent permitted by law, Seller shall indemnify and hold harmless Buyer (and its officers, directors, and employees), singly and jointly, from and against any and all losses, liabilities, fines, penalties, loss of anticipated profits, royalties, damages, assessments, judgments, awards, decrees, expenses (including, but not limited to, attorneys' fees, court costs and other expenses incurred in investigating, preparing, settling and/or defending against any litigation, claim, action, determination, suit, proceeding or demand of any kind or character) directly or indirectly arising from or related to: (a) any negligent act, negligent omission or willful misconduct of Seller, any subcontractor of Seller, Seller's agents and/or employees, anyone directly or indirectly employed or engaged by any of them, or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder; and (b) the breach of or failure to perform any covenant, promise, representation, warranty, duty and/or obligation made by or assigned to Seller or Seller's employees, subcontractors, or other agents under this Order. Seller's obligation of indemnification hereunder shall survive any termination or cancellation of this Order by any Party, for any reason and with or without cause. Seller acknowledges and is aware that certain hazards are inherent in the business operations, facilities and premises of Buyer and Seller knowingly and voluntarily assumes all risk of injury, loss and/or damage to persons and/or property while on the premises of Buyer. To the fullest extent permitted by law, Seller hereby releases, and forever discharges Buyer (and its directors, officers, and employees), from all damages, liabilities, losses, claims, and causes of action directly or indirectly resulting from or associated with Seller's presence on or possession of any part of the premises of Buyer. **IN NO EVENT SHALL BUYER BE**

LIABLE TO SELLER FOR SPECIAL, CONSEQUENTIAL, INCIDENTAL OR INDIRECT DAMAGES. Buyer shall not be liable to Seller for non-performance under or cancellation or termination of this Order if the same results from circumstances beyond Buyer's control, including (but not limited to) acts of God, floods, fires, storms, strikes, lockouts, work stoppages, wars, riots or acts of any governmental body, regulatory agency and/or judicial authority.

10. Setoff. Buyer shall have the right to credit toward the payment of the purchase price designated in this Order or the payment of any other amounts due and owing by Buyer to Seller as a result of any losses, damages, liabilities, or expenses suffered or incurred by Buyer arising from Seller's breach or non-performance of any promise, duty, covenant, representation or warranty made by or assigned to Seller under this Order or with respect to which Buyer has a right of indemnification hereunder.

11. Termination Without Cause. Buyer shall have the right to terminate or cancel this Order for any reason upon written notice to Seller which notice shall contain a termination date. Upon such termination, Buyer shall pay Seller for the value of Material and Services which comply with the terms and conditions of this Order and which were furnished prior to the termination date. No such termination shall relieve Seller of any of its duties and obligations hereunder with respect to Material furnished and Services performed prior to the termination date.

12. Termination With Cause. Buyer shall have the right to terminate or cancel this Order at any time and without prior notice if: (a) Seller breaches or fails to perform any promise, covenant, duty, obligation, representation and/or warranty made by or assigned to Seller under this Order and Seller fails to cure such breach or failure to perform in accordance with the time schedule set forth in the written notice received by Seller from Buyer specifying such breach or failure to perform; or (b) Seller becomes insolvent or is unable to meet its debts and obligations as they become due; or (c) Seller files a voluntary petition in bankruptcy; or (d) an involuntary petition to have Seller declared bankrupt is filed; or (e) a receiver or trustee is appointed for Seller; or (f) Seller executes an assignment for the benefit of creditors. No such termination shall relieve Seller of any of its duties and obligations hereunder with respect to Material furnished and Services performed prior to termination. In the event of a termination under this Section, Buyer may obtain the Material and/or Services from other sources and any excess in cost of same over the unpaid balance of the purchase price designated in this Order shall be chargeable to and paid by Seller on demand. Such right of cancellation or termination as provided herein is in addition to and in lieu of any other rights or remedies which Buyer may have at law or in equity.

13. Assignment. Seller shall not assign this Order (in whole or in part) or the right to any payments due or to become due without the prior written consent of Buyer. Any such actual or attempted assignment without Buyer's prior written consent shall be null, void and without effect, at the option of Buyer. The terms and conditions of this Order shall be binding upon any permitted assignee.

14. Ohio Law; Venue; Jurisdiction. Ohio's laws shall govern all disputes, controversies, interpretive matters and litigation arising hereunder. Seller and Buyer hereby agree that proper and exclusive venue for all disputes, controversies, interpretive matters and litigation arising hereunder lies with the Courts of Cuyahoga County, Ohio. Seller and Buyer (jointly and separately) agree to and hereby submit to the personal jurisdiction of the Courts of Cuyahoga County, Ohio for all disputes, controversies, interpretive matters and litigation arising hereunder.

15. Insurance. Seller shall (at its own cost) obtain and maintain the following insurance, satisfactory to Buyer as to form and limits, until completion and final payment hereunder:

- (a) Workers' Compensation, as required by the Workers' Compensation Laws of the State in which the work is being performed; and
- (b) Public Liability and Property damage insurance, including (but not limited to) contractual liability insurance as necessary to cover Seller's indemnification obligations hereunder, and Property and General Liability insurance of sufficient limits to cover any property of Buyer held by Seller hereunder and any obligations of Seller hereunder, and Automobile Liability and Property Damage insurance.

As periodically requested by Buyer, Seller shall promptly furnish to Buyer certificate(s) of insurance satisfactory in form and substance to Buyer evidencing that all of the insurance coverages required hereunder have been obtained and are effective.

16. Buyer's Property. Title to and right of immediate possession of all tooling, dies, patterns, molds and other items furnished by Buyer to Seller or purchased by the Buyer from Seller, shall remain in Buyer. Buyer does not guarantee the quality or suitability of such tooling, dies, patterns, molds or other items. Tooling subject hereto shall be maintained in good condition and shall be identified as the property of Buyer and shall be used with reasonable care in the performance of this Order. Seller shall maintain an inventory control of all such tooling, dies, patterns, molds and other items and the same shall not be co-mingled with property belonging to Seller or other persons or entities, except as such items may be incorporated into or attached to supplies consumed or expended in the performance of this Order. Invoices for tooling and/or dies shall be submitted after acceptance by Buyer of sample and production parts for which the tooling and/or die was ordered and received by Buyer and Seller's certification that each tool and/or die listed is satisfactory for use for which it is intended. All tools, dies, patterns, molds and other items subject hereto shall be fully covered by Seller with fire and extended coverage insurance for the protection and benefit of Buyer. Upon receipt of the items described in this Section, Seller shall be the absolute and unconditional bailee thereof and shall be strictly liable to Buyer for any damages thereto (reasonable wear and tear excepted) and/or for any failure to promptly return such items to Buyer upon Buyer's request upon completion or termination of this Order.

17. Compliance with Laws. In performing this Order, Seller shall comply with all applicable Federal, State and local laws, rules, regulations and orders pertaining to the Material and/or Services. Without limiting the generality of the foregoing, Seller represents and warrants

to Buyer that the Material and Services shall comply with all Federal, State and local laws, rules, regulations and orders pertaining to safety and health (including, but not limited to, the Occupational Safety and Health Act of 1970, as amended); that the Material shall be produced in compliance with the Fair Labor Standards Act, as amended, insofar as applicable; and that Seller will comply with all applicable Federal, State and local laws, rules, regulations and orders with regard to discrimination as to age, color, creed, sex, ancestry or national origin, physical handicap and veteran status.

18. Liens. Seller shall deliver and furnish the Material and/or Services free of all liens, claims and encumbrances. Seller shall pay promptly all claims and demands for all labor performed and for machinery, fuel and any other material or equipment furnished in the performance of this Order. As periodically requested by Buyer, Seller shall furnish to Buyer all lien waivers, affidavits and other documents required to keep the property of Buyer free from liens or claims for liens, arising out of the furnishing of equipment, labor, goods, Material Services or other items in connection with this Order.

19. Changes. Buyer reserves the right (at any time) to make written changes in any one or more of the following: (a) specifications, drawings, blueprints and data pertaining to this Order where the Material to be furnished is to be specially manufactured for Buyer; (b) methods of shipment or packing; (c) place of delivery; (d) time of delivery; (e) manner of delivery; and/or (f) quantities. If any such change causes an increase or decrease in the cost of or the time required for the performance of this Order, an equitable adjustment shall be made in the contract price or delivery schedule or both. Any claim by Seller for adjustment under this Section must be approved by Buyer (in writing) before Seller proceeds with any such change. Without Buyer's prior written approval, Seller shall not alter the Material price or quantity as set forth in this Order.

20. Packing. All Material shall be suitably packed and marked to secure lowest transportation costs in accordance with the requirements of common carriers. No separate charge will be allowed for packing, boxing, crating, marking, cartage or storage, unless otherwise set forth in this Order. Buyer's count shall be considered final and conclusive with respect to all shipments.

21. Proprietary Rights. All technical information and data in the nature of designs, blueprints, specifications, engineering data for production or product know-how which is provided to Seller by Buyer to facilitate or assist in the performance of this Order shall be deemed to be Buyer's "Confidential Information." In consideration for the adherence to and performance of Seller's promises in this Section, Buyer shall permit Seller to obtain access to the Confidential Information for use exclusively by Seller to perform under this Order. Seller shall use any such Confidential Information solely and exclusively for the purpose of performing under this Order. Seller agrees that, at all times, Seller (and Seller's employees, subcontractors and other agents) shall hold as a trustee and fiduciary all the Confidential Information for Buyer and for Seller's exclusive benefit and use, except as otherwise permitted by Buyer in writing. Without the prior written consent of Buyer, Seller shall not copy, reproduce or otherwise duplicate the Confidential Information in any manner, except as may be absolutely necessary to perform under this Order. Without the prior written consent of Buyer, Seller (and its employees, subcontractors and other agents) shall not directly or indirectly disclose or convey to any person or entity any of the Confidential Information. Upon the periodic request of Buyer, Seller shall

immediately disclose and deliver to Buyer any Confidential Information in its possession or conveyed by Seller to any third party and shall not retain any copies or duplicates thereof. Seller acknowledges and agrees that any and all of the following items shall (at all times) be and remain the exclusive property of Buyer and shall be deemed to be Confidential Information (subject to all the terms and conditions of this Section): all inventions, improvements, discoveries, ideas and other creations which Seller acquired, developed, conceived or made during the performance of this Order and which pertain to or are derived from the Confidential Information (herein collectively called the "Developments"), and/or any other information received by Seller from Buyer that constitutes a trade secret under Ohio's Uniform Trade Secret Act, O.R.C. Section 1333.61, et. seq. Upon the request of Buyer, Seller shall immediately disclose and deliver to Buyer all the Developments and Seller shall not retain any copies or duplicates thereof. Upon the request of Buyer, Seller shall immediately execute and sign any and all applications, assignments and/or other instruments deemed necessary by Buyer to apply for and obtain Letters Patent of the United States of America (and/or any foreign countries) or copyright or trade mark/service mark registrations for any or all of the Developments, in such form as Buyer determines to assign and convey to Buyer all right, title and interest in and to such Developments. Seller's promises, duties, obligations and covenants under this Section shall survive any termination of this Order by any Party, for any reason and with or without cause.

22. Robinson Patman Act. Seller represents and warrants to Buyer that the prices for the Material and/or Services furnished to Buyer hereunder are not less favorable than those extended to any other customer for the same or like item in equal or less quantities. In the event Seller reduces its price for such items during the performance of this Order, Seller shall properly reduce the prices hereof correspondingly.

23. Infringement Indemnity. Without limiting the generality of any warranty or indemnity provided hereunder, Seller represents and warrants to Buyer that the sale or use of the Material shall not infringe any United States or foreign patent, trademark, copyright or similar right and Seller hereby agrees to indemnify and forever hold harmless Buyer (and its shareholders, officers, directors, employees and other agents) from and against all losses, liabilities, damages, judgments, claims, causes of action, suits, expenses (including, but not limited to, attorneys' fees and court costs) and other charges directly or indirectly resulting from, related to and/or associated with any alleged or actual infringement of any patent, copyright, trademark or similar right from Buyer's use, sale or distribution of the Material.

24. Export Matters. If any Products to be purchased under this Order are or will be subject to U.S. Export Administration Regulations, Seller agrees that Seller will promptly provide Buyer with sufficient information to enable Buyer to assign the proper Export Control Commodity Numbers to such Products or will otherwise provide to Buyer such Export Control Commodity Numbers.

25. Miscellaneous. This Order constitutes the entire agreement between Buyer and Seller regarding the subject matter herein and supersedes all prior and contemporaneous oral or written discussions, arrangements and agreements regarding the subject matter hereof. No course of dealings between the Parties, no waiver by either Party, and no refusal or neglect of either Party to exercise any right hereunder or to enforce compliance with the terms of this Order shall constitute a waiver of any provision herein with respect to any subsequent breach, actions or omissions hereunder, unless such waiver is expressed in writing and signed by the waiving

Party. If any term or condition of this Order is invalid, illegal or unenforceable, the remaining terms and conditions of this Order shall remain in effect. No additions to or modifications of the terms and conditions of this Order shall be binding upon Buyer except upon the written consent of Buyer. Any right or remedy granted to Buyer under any provision of this Order shall not be exclusive and shall not prejudice any other rights or remedies Buyer has or may hereafter have against Seller under another provision of this Order or as a matter of law or equity. This Order shall be binding upon Seller and Seller's employees, subcontractors, agents, representatives, successors and assigns and shall inure to the benefit of Buyer and its successors and assigns.