

TERMS AND CONDITIONS OF SALE

1. **Definitions.** For purposes of these Terms and Conditions, “Goods” means castings, machines, components, fabrications and similar items furnished under this Order; “Services” means engineering, design, repair and similar services rendered under this Order; “Buyer” means the individual or entity, including its employees, shareholders, members, officers, managers, successors and assigns, heirs, executors and administrators (as the case may be), designated to the immediate right of the “sold to” field on the Order Acknowledgment; “Seller” means Alcon Industries, Inc.; “Order” means the transaction whereby Buyer will purchase the Goods and Services from Seller as memorialized on the Order Acknowledgment; and “Order Acknowledgment” means the order acknowledgment on the face of these Terms and Conditions. Unless otherwise defined in these Terms and Conditions, all terms and phrases contained herein have the same meaning as that set forth in Ohio Uniform Commercial Code Article 2, Ohio Revised Code § 1302.01, *et seq.*

2. **Shipment and Payment.** Delivery of Goods is F.O.B. place of shipment. The risk of loss or damage passes to Buyer upon delivery of the Goods to a carrier. Seller’s obligation to ship or deliver is (at all times) expressly conditioned upon the approval of Buyer’s credit by Seller. If Buyer fails to comply with the terms of payment as set forth on the Order Acknowledgment, or in the event that the credit or financial responsibility of Buyer becomes impaired or unsatisfactory to Seller, Seller has the right to demand cash or security (in form and substance satisfactory to Seller in its sole and absolute discretion) before shipping Goods or furnishing Services. Upon the failure of Buyer to promptly provide cash or satisfactory security to Seller, Seller (in addition to any other right or remedy Seller has under these Terms and Conditions or applicable law) has the right to withhold future deliveries of the Goods, to withhold performance of Services, or to terminate the Order (in whole or in part), and any unpaid amount owed on the Order to Seller by Buyer must be paid immediately. Buyer must pay the purchase price for the Goods and Services furnished under the Order as set forth on the Order Acknowledgment.

3. **Delivery.** Delivery, shipment and other performance dates designated in the Order Acknowledgment or these Terms and Conditions are estimates only, and unless otherwise specified, are determined from the date of Seller’s receipt of Buyer’s written instruction.

4. **Acceptance.** Buyer is deemed to have accepted the Goods or Services if Buyer fails to provide written notice of objection of the Goods or Services within 15 calendar days of Buyer’s receipt of the Goods or Services.

5. **Revocation of Acceptance.** To the extent permitted by law, Buyer hereby waives any right to revoke acceptance of any Good or Service.

6. **Pattern and Die Equipment.** Except as otherwise provided in these Terms and Conditions, Buyer must furnish pattern or die equipment (suitable to Seller) and must assume the cost of any alterations of that pattern or die equipment. Seller is not responsible for the inspection of pattern or die equipment. But if Seller agrees in writing to an inspection, Buyer must furnish

Seller drawings and any other pertinent information regarding permissible variations between castings and drawings. Shipping and crating charges on pattern or die equipment are the responsibility of Buyer. Seller is not responsible for loss or damage to pattern or die equipment. Seller and Buyer acknowledge and agree that Seller has a lien on any pattern or die equipment in Seller's possession to the extent as provided under any applicable federal, state or local law.

7. Changes. Buyer cannot make any changes to specifications, plans, drawings, delivery instructions, approval of samples or any other instructions without Seller's prior written approval. If any approved change affects these Terms and Conditions, Seller and Buyer must promptly make a mutually agreeable adjustment in a writing signed by Seller and Buyer to the term(s) so affected. Buyer must reimburse Seller (upon Seller's demand) for any loss or expense incurred by Seller as a result of any approved change.

8. Buyer's Property. Seller is not a bailee of any property or other asset(s) of Buyer in Seller's possession and the property or asset is held by Seller at Buyer's sole risk.

9. Security Interest. Title to the Goods remains with Seller until the entire purchase price for the Goods is paid. Buyer hereby grants to Seller a security interest in the Goods and the proceeds and products thereof to secure the payment of the purchase price for the Goods and all other sums due and owing from Buyer to Seller. Buyer hereby authorizes Seller to file all necessary financing statements and agrees to execute any and all documents necessary to effect such filings. Buyer must not sell, pledge, mortgage, lease or otherwise encumber the Goods unless and until the entire purchase price for the Goods is paid. No Good shall be considered a fixture or be incorporated into Buyer's realty by reason of attachment thereto, and may be separated therefrom for purposes of repossession, in the event Buyer fails to pay the purchase price for the Goods and all other sums due and owing from Buyer to Seller. Seller reserves the right to waive repossession of the Goods and to assert a mechanics, materialmens or laborers lien against the property upon which the Goods have been erected or installed.

10. Inspection. The purchase price for the Goods and Services does not include the costs incident to inspections performed by any third party at the request of Buyer. Buyer must pay all such costs.

11. Tolerances and Variations. Except as specified by Buyer and expressly agreed to by Seller in writing, the Goods will be produced in accordance with Seller's standard business practices. All Goods (including, but not limited to, Goods produced to meet an exact specification) are subject to tolerances and variations consistent with good manufacturing practice with respect to dimensions, weight, section, chemistry and mechanical properties, to the normal variations in surface and internal conditions and in quality, and to deviations from tolerances and variations consistent with practical testing and inspection methods.

12. Disclaimer. Seller warrants to Buyer that the Goods conform to the description on the Order Acknowledgment (subject to the provisions of Section 11 of these Terms and Conditions) and that the Goods are free from defects in material and workmanship under normal use and service.

The warranty of Seller contained in these Terms and Conditions does not apply to items manufactured or produced, or services provided, by persons or entities other than Seller. **THE WARRANTIES SET FORTH IN THESE TERMS AND CONDITIONS ARE SELLER'S EXCLUSIVE WARRANTIES AND SELLER EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES (WHETHER WRITTEN, ORAL, IMPLIED OR STATUTORY), INCLUDING (BUT NOT LIMITED TO) ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.** Any claim for breach of any of Seller's warranties must be demonstrated to Seller's satisfaction to have existed at the time of delivery of the Good(s) and will be deemed waived by Buyer unless written notice of the claim is actually received by Seller within 30 calendar days after Seller has shipped the Good to which the claim relates. Seller's liability under the Order is expressly limited (at Seller's option) to the replacement or repair of the nonconforming or defective Good or to a credit equal to the purchase price of nonconforming Good. Any liability of Seller is conditioned upon Seller's receipt of the purchase price for the Order. If Seller elects to repair the Good, Seller will use its best efforts to make those repairs. **BUYER WAIVES ANY CLAIM OR ARGUMENT THAT ANY WARRANTY MADE BY SELLER HAS FAILED ITS ESSENTIAL PURPOSE.** Prior to the repair, replacement, or credit, Seller has the right to inspect the Good claimed to be defective or nonconforming, and, if requested by Seller, Buyer must return the Good to Seller at Seller's direction and expense. No Good can be returned to Seller without Seller's prior written consent. **THE REMEDIES SET FORTH IN THESE TERMS AND CONDITIONS CONSTITUTE THE EXCLUSIVE REMEDIES AVAILABLE TO BUYER AND ARE IN LIEU OF ALL OTHER REMEDIES.**

13. Limitation of Liability. IN NO EVENT WILL SELLER BE LIABLE FOR ANY INCIDENTAL, DIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES RESULTING FROM SELLER'S PERFORMANCE OR FAILURE TO PERFORM UNDER THE ORDER, OR THE FURNISHING, PERFORMANCE OR USE OF ANY GOOD OR SERVICE, WHETHER DUE TO BREACH OF CONTRACT, BREACH OF WARRANTY, THE NEGLIGENCE OF SELLER OR OTHERWISE. Seller's liability under no circumstances will exceed the purchase price for the Good or Service for which liability is claimed.

14. Force Majeure. Seller will not be liable to Buyer for loss, damage, liability, or expense incurred by Buyer because of Seller's nonperformance or termination of the Order if the termination or nonperformance resulted from circumstances beyond Seller's control, including (but not limited to) acts of God, labor difficulties, shortages or acts of any governmental or judicial authority.

15. Claims. Any claim for error in weight or shortage of Goods must be submitted to Seller (in writing) within 15 calendar days from the date of shipment of the Goods, and the claim must state the packing slip number and container number applicable to the claim. Any claim for error in weight or shortage not submitted in accordance with this paragraph is deemed waived by Buyer.

16. Indemnification; Assumption of Risk. To the extent permitted by law, Buyer must indemnify and hold Seller harmless from and against any and all liability, damage, loss, action,

cause of action, claim (including, but not limited to, a claim of patent infringement), expense, cost (including, but not limited to, attorney's fees), fine, penalty and any other expense directly or indirectly arising from Buyer's transfer of any Good to a third party, or Buyer's actual or intended use of any Good. Buyer assumes all risks of loss or damage to person or property while on the premises of Seller. To the extent permitted by law, Buyer hereby releases and forever discharges Seller from any and all liability, damage, loss, action, cause of action, claim, expense, cost or demand resulting or arising from Buyer's presence on the premises of Seller. Buyer represents to Seller that Buyer has the authority to grant this release.

17. Quantity Deviations. Seller may make and Buyer must accept and pay for deliveries 10% over or under the quantity specified on the Order Acknowledgment at the unit price stated on the Order Acknowledgment.

18. Taxes and Duties. The purchase price for the Goods and Services does not include sales, excise, import, export or any other tax or duty payable on account of the Order. All such duties or taxes now in effect (or hereafter levied) that are applicable to the Order are in addition to the purchase price and must be paid by Buyer.

19. Non-Waiver. No waiver, alteration or modification of any provision of these Terms and Conditions is binding on Seller unless it is expressed in writing by Seller. The waiver by Seller of any breach or default by Buyer is not a waiver by Seller of any default or breach by Buyer that may later occur.

20. Terms of Contract. Seller's acceptance of the Order by Buyer is expressly conditioned upon Buyer's acceptance of these Terms and Conditions, which acceptance will be deemed to have occurred unless Buyer notifies Seller to the contrary within 5 calendar days after Buyer's receipt of the Order Acknowledgment. Any term or condition of Buyer's purchase documents that is inconsistent with or in addition to these Terms and Conditions is not binding on Seller and is not applicable to the Order, notwithstanding Seller's receipt of, or acknowledgment of, Buyer's purchase documents. Buyer and Seller acknowledge and agree that these Terms and Conditions supersede and reject all prior verbal or written discussions, negotiations or arrangements regarding the Order. These Terms and Conditions may be amended only through a written document signed by Buyer and Seller that makes express reference to these Terms and Conditions.

21. Confidentiality. Buyer must not directly or indirectly use or disclose to any person or entity (other than Seller) any of Seller's customer lists, customer records, trade secrets, business or manufacturing techniques or processes, price lists, business records, confidential documents or any other confidential or proprietary information. Buyer represents to Seller that Buyer has the authority to agree to these confidentiality covenants. The confidentiality covenants survive the termination of the Order.

22. Assignment. Seller reserves the right to subcontract all or any part of the work to be performed under the Order, without obtaining the consent of, or providing notice to, Buyer. The rights and obligations of Buyer may not be assigned without the prior written consent of Seller.

23. Cancellation. Buyer may cancel the Order only by written notice and only if Buyer makes full payment to Seller for all Goods or Services which, upon receipt of the notice by Seller, are within 60 calendar days of completion. Partial payment for all Goods and Services not within 60 calendar days of completion must be made by Buyer on the basis of the actual cost of labor, materials and supplies applied to the production of the Goods or the furnishing of the Services, plus overhead expenses, and plus 20% of the cost and expense. A Good may be returned only if expressly authorized in writing by Seller. Buyer must pay, upon Seller's written demand, the cost incurred by Seller for placing any returned Good in a saleable condition, together with any sales expense incurred by Seller, plus a restocking charge and any outgoing and incoming transportation cost that Seller incurs.

24. Termination. In addition to Seller's other rights and remedies, Seller may by written notice to Buyer terminate the Order (in whole or in part) if Buyer fails to perform or breaches any duty or obligation under these Terms and Conditions or under the Order Acknowledgment; Seller will not be liable to Buyer for any loss, damage or expense incurred by Buyer as a result of this termination. Upon any such termination, any amount due and owing to Seller by Buyer must be immediately paid.

25. Governing Law; Jurisdiction; Venue. The laws of the State of Ohio govern all disputes, controversies and litigation arising under the Order, Order Acknowledgment or these Terms and Conditions. Exclusive venue and jurisdiction for all such disputes, controversies and litigation lies with the courts of Cuyahoga County, Ohio.

26. Limitation for Suits. Any cause of action or claim by Buyer arising out of or relating to Seller's performance or failure to perform or the furnishing, performance or use of any Good must be commenced within one (1) year after the cause of action or claim has accrued.

27. Severability. If any term of these Terms and Conditions is determined by a court of competent jurisdiction to be illegal, unconscionable or unenforceable, that term must be severed from these Terms and Conditions and the remaining terms will continue in full force and effect.