

# DECENTRALISED BUYING GROUP AGREEMENT FOR BRANDED AND PRIVATE LABEL PRODUCTS

## GENERAL TERMS

### 1. COMMENCEMENT AND TERM

- 1.1 The Agreement will commence on the Start Date and subject to Section 1.2, will continue, unless terminated earlier in accordance with its terms, for the Initial Term and thereafter until either Party gives at least three (3) months' written notice to the other Party, such notice to expire on or after the end of the Initial Term.
- 1.2 The Agreement will expire automatically on the date falling five (5) years after the Start Date.

### 2. PRODUCTS

- 2.1 Any parts of these General Terms which relate solely to the Supplier Products or the Private Label Products will only apply if the relevant Product type is referenced in the Agreement Details.
- 2.2 The Supplier may, at its discretion, provide the Customer and the Members with trial or sample Products, for the sole purpose of giving trials or preliminary fittings to End Users (**Diagnostic Lenses**). The Customer acknowledges that:
- (a) any Diagnostic Lenses are supplied at the Supplier's discretion and the Supplier is entitled to (i) decline any request for Diagnostic Lenses, and/or (ii) charge for the supply of any Diagnostic Lenses to the Customer and/or for the delivery of any Diagnostic Lenses to the Customer or the End User (such charges to be notified to the Customer in advance);
  - (b) it and the Members are not permitted to sell any Diagnostic Lenses (unless otherwise agreed in writing by the Supplier (including by email) and only as permitted by applicable laws, regulations and requirements); and
  - (c) the Minimum Quantities will not include any Diagnostic Lenses provided to the Customer and/or the Members under the Agreement.

### 3. MEMBERS

- 3.1 The Customer acknowledges and agrees that the Agreement supersedes any current or previous agreement that it or its Members had with the Supplier or any of its Group for the supply of the Products or their equivalent.
- 3.2 In addition to supplying Products to the Customer (if the Customer so elects), the Supplier agrees to supply Products directly to the Members in accordance with the terms of the Agreement.
- 3.3 Subject to Section 3.4, the Customer may add any Member, by giving thirty (30) days prior written notification (including by email) to the Supplier (with a copy to [accountsreceivable@za.coopervision.com](mailto:accountsreceivable@za.coopervision.com)), provided that:
- (a) the Member fulfils all requirements and holds any necessary licenses and permits for the import, handling or sale of the Products in the Territory and can provide sufficient proof of this to the Supplier on request;
  - (b) such addition does not lead to double membership in other buying groups; and/or
  - (c) there is no separate supply agreement between the Supplier and the Member for the supply of the Products or their equivalent.
- 3.4 The Supplier reserves the right to: (i) reject the addition of any Member at its discretion; (ii) from time to time, amend the criteria for adding Members and shall give reasonable written notice (including by email) to the Customer of any such change; and (iii) require that any overdue invoices are paid in full by the Member before such Member is added to the Agreement.
- 3.5 The Customer may also remove any Member by giving thirty (30) days prior written notification (including by email) to the Supplier (with a copy to [accountsreceivable@za.coopervision.com](mailto:accountsreceivable@za.coopervision.com)). If the Customer removes a Member, such removal shall be without prejudice to any liabilities and obligations incurred by that Member (or the Customer as a result, including under Section 14.2) prior to such removal. The Supplier is entitled to assume that any third party claiming to be a Member is authorised as a Member by the Customer.
- 3.6 The Supplier reserves the right to refuse to supply any individual Member if such Member commits a material breach of the Terms of Business which is irremediable or, if capable of remedy, fails to remedy the same within thirty (30) days of being required in writing by the Supplier to do so.

### 4. ORDER PROCESS AND CONTRACT FORMATION

- 4.1 Placing an Order The Customer and any Member may order Products using the Supplier's approved sales channels (**Product Request**) at the Prices set out in the Agreement. Each Product Request will be a separate offer by the Customer or the Member (as the case may be) to buy the relevant Products in accordance with the Terms of Business. The Supplier may accept or decline any Product Request in whole or in part at its absolute discretion. Where the Supplier accepts a Product Request (at which point it will become binding (**Order**)) from the Customer, the resulting contract will be a contract between the Supplier and the Customer. Where the Supplier accepts a Product Request from a Member, the contract will be between the Supplier and that Member. Any reference in the Terms of Business to "Customer" is to be construed as a reference to the party from whom the Product Request is received, being either the Customer (as defined in the Agreement) or a Member.
- 4.2 The Customer will ensure that each Member accepts the arrangement set out in Section 4.1 and is responsible for notifying the Members of any change under the Agreement which affects the terms of any Order. Where there is a conflict between the terms of the Agreement and any Order, the terms of the Agreement shall prevail.

### 5. FORECASTS

- 5.1 Within ten (10) days of the Start Date and of the start of every subsequent three (3) month period, the Customer will provide a forecast of the Customer's and the Member's requirements for Private Label Products for each of the following six (6) calendar months (including the month in which the forecast is given). The Customer undertakes that the actual quantity of Private Label Products ordered by it and/or the Members during each such period will be within 20% of the forecast provided for that period.
- 5.2 In addition, the Customer will ensure that the quantity of Private Label Products ordered in each month is at least 80% of the forecast for that month provided by the Customer under Section 5.1.
- 5.3 The Supplier may also require the Customer to provide forecasts of the Customer's and the Member's requirements for the Supplier Products, at such intervals as the Supplier may reasonably require, by giving the Customer five (5) Business Days' notice in writing.

### 6. MINIMUM QUANTITIES – PRIVATE LABEL PRODUCTS ONLY

- 6.1 Minimum Quantity In each Year the Customer will ensure that it and the Members place Orders for at least the Minimum Quantity of each Private Label Product. The Supplier reserves the right to review and amend the Minimum Quantity per Year of each Private Label Product after the expiry of the Initial Term. In the absence of any notification from the Supplier, the Minimum Quantities from the previous Year will continue to apply.
- 6.2 Failure to Meet the Minimum Quantity Any failure to meet the Minimum Quantity for any Year will constitute a material breach of the Agreement except to the extent that such failure relates to Private Label Products that the Supplier has ceased to provide in accordance with Section 7.6. Following a material breach pursuant to this Section 6.2:
- (a) the Supplier will be entitled to terminate the Agreement immediately on written notice to the Customer; and
  - (b) whether or not the Agreement is so terminated the Customer will pay to the Supplier the difference between the full value of the Minimum Quantity for such Year and the amount actually paid by the Customer and/or the Members for the Private Label Products during that Year. Payment must be made by the Customer within five (5) Business Days of the end of the Year in which the failure occurred.
- 6.3 In any Year in which the Customer and/or the Members fails to purchase the Minimum Quantity of any Private Label Product, the Supplier may choose to apply the following provisions to the relevant Product(s) instead of treating such failure as a material breach in accordance with Section 6.2:

<b>Percentage of Minimum Quantity met</b>	80 – 90%	Less than 80% - where Product is overlabelled	Less than 80% - where Product is pre-printed pack
<b>Payment</b>	Without prejudice to Section 9.1, the Price for the relevant Products will be increased by 5% in the following Year		
<b>Replacement by Equivalent Product</b>	Not Applicable	Supply of the Product will cease and the Supplier will supply the Customer with the Equivalent Supplier Product	Supply of the Product will cease and the Supplier will provide the Customer with the same Product overlabelled
<b>Ongoing Minimum Quantity</b>	The Minimum Quantity will continue to apply	Not Applicable	The Minimum Quantity will continue to apply to the overlabelled Product.

6.4 If the Customer and/or the Members fail to achieve any Minimum Quantity, the Customer will pay for any stocks of Labels and packaging ordered or held by the Supplier which would have been used for the relevant Products had the Minimum Quantity been achieved. Payment shall be made by the Customer on demand following the end of the relevant Year.

**7. MANUFACTURE, PACKAGING AND CHANGES TO THE PRODUCTS**

Products and Packaging

7.1 The Supplier may change the design, materials, mode of manufacture, specifications, production, packaging, Packing Specification or any other element of any Product. The Supplier will give reasonable written notice to the Customer (including by email) of any change made under this Section 7.1.

7.2 For Private Label Products, the Customer will only change the Packing Specification with the prior written agreement of the Supplier (and such agreement may require payment by the Customer of the Supplier's costs caused by such change and other reasonable conditions). If the Customer requires any change it will provide at least three (3) months' written notice to the Supplier, specifying all relevant details. If a Competent Authority requires amendments to the design of the Packing Specification, the Supplier will make such changes and notify the Customer in writing thereafter but without needing the Customer's consent.

7.3 The Customer must comply, and will ensure that the Members comply, with any legislation, regulations and professional codes relating to the Products including the Medicines and Related Substances Act, 1965 (Act No. 101 Of 1965) of South Africa, the General Regulations Relating to Medical Devices and In Vitro Diagnostic Medical Devices and the Ethical Rules of Conduct for practitioners registered under the Health Profession Act, 1974 (in particular Annexure 8, to the extent applicable) and governing:

(a) their importation, use, marketing or sale in the country of destination;

(b) payment of any duties or taxes; and

(c) transportation and storage including all obligations to translate instructions, labelling or packaging into any other language.

The Supplier may take any reasonable steps it deems necessary to verify the Customer's compliance with its obligations under this Section.

7.4 Label Design The responsibilities of each Party will depend on the category of Product as follows:

(a) for Supplier Products, the Supplier will be responsible for the design of the Label and shall ensure that the design and content complies with South African laws;

(b) for Private Label Products:

(i) the Customer will provide the relevant artwork for the Labels and shall ensure that the artwork complies with South African laws; and

(ii) the Supplier will ensure that any other aspect of the design and content of the Label conforms to South African laws.

Without prejudice to the responsibilities determined above, the Supplier may refuse the use or amendment of Customer artwork or design of any Label on any basis including potential third party IPR infringement, breach of relevant marketing laws or lack of compliance with South African laws.

7.5 Affixing the Label

The Supplier will affix all Labels to the Products in accordance with the Packing Specification. The Supplier will not be responsible for loss suffered by the Customer or any Member which results from the Labels or labelling of the Products except in so far as such loss arises directly as a result of a failure to comply with the Packing Specification.

7.6 Removing products

The Supplier may cease to supply all or any Products:

(a) with immediate effect where the Supplier considers this reasonably necessary to address any health or safety concerns or as required by law or by a Competent Authority; or

(b) on a temporary basis where the Supplier is experiencing supply chain or manufacturing difficulties; or

(c) by giving at least three (3) months' written notice to the Customer (including by email).

Following any notice pursuant to this Section 7.6, the Parties will agree appropriate reductions to the Minimum Quantities.

**8. EXCLUSIVITY**

8.1 The Supplier will be the sole and exclusive supplier to the Customer and the Members of the Products and subject to Clause 3.6(b) of the Terms of Business (Delay), the Customer and the Members will not purchase the Products from any third party during the Term.

**9. PRICE CHANGES**

9.1 The Supplier may change the Prices at its discretion, by giving the Customer not less than thirty (30) days' notice in writing (including by email).

**10. CONFIDENTIALITY**

10.1 Each Receiving Party will hold all Confidential Information of the Disclosing Party which it obtains under the Agreement, in strict confidence and will not disclose or authorise the disclosure of any Confidential Information except:

(a) to its personnel and advisers who need to know such information for the purposes of exercising the Receiving Party's rights or carrying out its obligations under the Agreement; or

(b) to the Members to the extent necessary to enable purchase of the Products in accordance with the terms of the Agreement;

(c) where and to the extent authorised to do so by the Disclosing Party; or

(d) as required to do so by law, a court of competent jurisdiction or any governmental or regulatory authority.

Each Receiving Party will not use the Disclosing Party's Confidential Information for any other purpose.

10.2 The Customer will ensure that the Members comply with Section 10.1 with respect to the Supplier's Confidential Information, where such disclosure has been authorised in accordance with that Section.

10.3 The obligations with respect to Confidential Information will continue for a period of three (3) years following the termination or expiry of the Agreement.

**11. DATA PROTECTION**

11.1 The Parties agree that, for the purposes of Data Protection Law, each Party (to the extent it processes Personal Information) processes Personal Information as a Responsible Party in its own right. Nothing in the Agreement (or the arrangements contemplated by it) is intended to construe either Party as the Operator of the other Party or as joint Responsible Parties with one another with respect to any Personal Information.

11.2 Each Party shall ensure that:

- (a) all Personal Information, including Special Personal Information, disclosed or transferred to, or accessed by, the other Party is accurate and up-to-date; and
- (b) all Processing notices have been given, and (as applicable) all necessary consents have been obtained, in accordance with Data Protection Law, to allow it to disclose any Personal Information, which includes Special Personal Information, to the other Party.

11.3 The Customer and Supplier each agree to comply with their obligations under Data Protection Law with respect to the Processing of Personal Information under or in connection with the Agreement.

11.4 If a Party receives any complaint, notice or communication which relates to any actual or alleged non-compliance with Data Protection Law with respect to the Processing of Personal Information under or in connection with the Agreement, that Party shall without undue delay notify the other Party in writing and the Parties shall cooperate with one another to resolve the same.

## 12. INTELLECTUAL PROPERTY RIGHTS

12.1 Licence from the Supplier The Supplier grants to the Customer and the Members a non-exclusive, non-transferable right in the Territory to use the Supplier's name, the Supplier Trademarks and the Supplier's IPR in the Packing Specification (including on the Labels where relevant) (the **Supplier Licensed IPR**) during the Term on any sales literature, point of sale material and advertisements for the promotion of the Products provided such use is strictly in accordance with the terms of the Agreement and any brand guidelines made available by the Supplier.

12.2 Except as permitted under the Agreement, or expressly authorised in writing by the Supplier, the Customer will not (and will not allow or encourage others to) use, register or attempt to register the Supplier Licensed IPR or any other name or trade mark similar to those of the Supplier or its Group.

12.3 Supplier Warranties The Supplier warrants to the Customer that:

- (a) it is fully entitled to grant the licence of the Supplier Licensed IPR in Section 12.1; and
- (b) the use of the Supplier Licensed IPR in accordance with the Agreement will not infringe any third party IPR.

12.4 Licence from the Customer The Customer grants to the Supplier a royalty-free, exclusive licence (including the right to grant sub-licences) to use the Customer Trademarks (the **Customer Licensed IPR**) to produce the Labels for the Private Label Products during the Term.

12.5 Customer Warranties The Customer warrants to the Supplier that:

- (a) it is the sole legal and beneficial owner of the Customer Licensed IPR in the Territory or otherwise that it is fully entitled and authorised to grant the licence of the Customer Licensed IPR in Section 12.4; and
- (b) the use of the Customer Licensed IPR by the Supplier or its Group in accordance with the Agreement will not infringe any third party IPR.

12.6 Use of the Licensed IPR Neither Party will, except with the prior written consent of the other Party:

- (a) alter, add to, deface or remove in any manner any packaging or Labels for the Products or any reference to the relevant Licensed IPR, the other Party or to any other name whether attached or affixed to the Products or their packaging or Labels;
- (b) use, in relation to the Products, any trade marks other than the relevant Licensed IPR; or
- (c) use in the Territory any trademarks or trade names confusingly similar to the relevant Licensed IPR or any other trademarks or trade names used by the other Party.

The Customer will ensure that the Members also comply with the obligations set out above.

12.7 Use of the Supplier Licensed IPR The Customer will:

- (a) at the Supplier's reasonable expense, take all such steps as the Supplier may reasonably require to assist the Supplier in maintaining the validity and enforceability of the Supplier Licensed IPR during the Term; and
- (b) promptly and fully notify the Supplier of any actual, threatened or suspected infringement of any Supplier Licensed IPR which comes to the Customer's notice, and/or of any claim by any third party coming to its notice that the importation of the Products into the Territory, or their sale in the Territory, infringes the rights of any other person. The Customer will at the reasonable request and expense of the Supplier do all such things as may be required to assist the Supplier in taking or resisting any proceedings in relation to any such infringement or claim.

The Customer will ensure that the Members also comply with the obligations set out above.

## 13. LIABILITY

13.1 Subject to Sections 13.4 and 13.5, the Supplier's total liability to the Customer in contract, delict (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, and including loss of data or data breaches, shall in no circumstances exceed the amounts paid to the Supplier by the Customer (i) over the three (3) months preceding the date the liability arose, or (ii) up to the point that the liability arose if such liability occurs before the Agreement has been in existence for three (3) months.

13.2 Except as expressly set out in the Agreement, all other conditions, warranties or other terms which might be implied or incorporated into the Agreement, whether by statute, common law or otherwise, including the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose or the use of reasonable skill and care are excluded.

13.3 Neither Party nor its Group will be liable to the other Party whether in contract, delict (including negligence or breach of statutory duty) or otherwise arising out of, or in relation to, the Agreement, for any:

- (a) direct or indirect loss of profit, revenue, business, goodwill or anticipated savings; or
- (b) indirect or consequential loss,

provided that nothing in the Agreement will operate to limit the Supplier's right to recover payment of any properly rendered invoice.

13.4 The limits of liability set out in Sections 13.1 and 13.3 will not apply to any indemnity under Section 14.

13.5 Nothing in the Agreement will limit or exclude either Party's liability for:

- (a) any loss directly or indirectly attributable to the Supplier's gross negligence or wilful default or that of any other person acting for or controlled by the Supplier;
- (b) fraud or fraudulent misrepresentation;
- (c) death or personal injury caused by negligence; and/or
- (d) where such limitation or exclusion would contravene applicable law.

## 14. INDEMNITIES

14.1 Indemnification by Supplier The Supplier will indemnify the Customer and its directors, officers, employees, sub-contractors and agents (the **Customer Indemnified Parties**) against any and all claims, liabilities, damages, losses, expenses and costs (including legal costs on a full indemnity basis), that the Customer Indemnified Parties sustain or incur as a result, directly or indirectly, of any action, claim or proceeding that the Supplier Licensed IPR infringes the IPR of any third party.

14.2 Indemnification by Customer The Customer will indemnify the Supplier, the Supplier's Group and their respective directors, officers, employees, sub-contractors and agents (the **Supplier Indemnified Parties**) against any and all claims, liabilities, damages, losses, expenses and costs (including legal costs on a full indemnity basis), that the Supplier Indemnified Parties sustain or incur as a result, directly or indirectly, of any action, claim or proceeding that:

- (a) any of the Customer Licensed IPR infringes the IPR of any third party;
- (b) arises as a result of a breach by a Member of the Terms of Business;
- (c) arises as a result of a breach by the Customer of its obligations under Sections 7.3 or 7.4(b)(i); or
- (d) arises as a result of a breach by the Customer of its obligations under Section 10 and/or Clause 16 of the Terms of Business (Data Protection).

**15. FORCE MAJEURE**

- 15.1 A Party will not be liable for any failure or delay in fulfilling any obligation under the Agreement to the extent that such failure or delay is the consequence of a Force Majeure Event.
- 15.2 The Party unable to fulfil its obligations as a result of the Force Majeure Event will, as soon as reasonably practicable:
- notify the other Party of the nature and extent of the Force Majeure Event; and
  - use commercially reasonable efforts to commence performing such obligations as soon as possible or otherwise mitigate the effects of the Force Majeure Event by finding a workaround to perform the obligation despite the Force Majeure Event.
- 15.3 If a Party is prevented from performing its obligations due to a Force Majeure Event for ninety (90) days or more, then the other Party will have the right to terminate all or part of the Agreement in accordance with Section 16.1(c).

**16. TERMINATION**

- 16.1 Mutual Termination Rights Without limiting any other rights or remedies it may have, either Party may terminate the Agreement immediately by giving written notice to the other Party, if that other Party:
- commits a material breach of the Agreement which is irremediable or, if capable of remedy, fails to remedy the same within thirty (30) days of being required in writing by that Party to do so;
  - suffers an Insolvency Event; or
  - suffers a Force Majeure Event for ninety (90) days or more.
- 16.2 Supplier Termination Rights Without limiting any other rights or remedies it may have, the Supplier may terminate the Agreement:
- at any time for convenience by giving at least three (3) months' written notice to the Customer;
  - by giving thirty (30) days' written notice to the Customer if the business and assets of the Customer (or the majority of them) are acquired by a third party or if the Customer undergoes a Change of Control; or
  - by giving fourteen (14) days' written notice to the Customer where the Customer fails to pay any amount due under the Agreement by the Payment Date and has still not made payment within fourteen (14) days of being notified in writing to do so;
  - for Private Label Products, immediately on written notice where:
    - a Competent Authority requires either the Customer or the Supplier to cease the labelling arrangements set out in Section 7; or
    - the Customer commits a breach of its obligations in respect of Sections 7.4 (Label Design) or Section 12 (Intellectual Property Rights).
- 16.3 Consequences of Expiry or Termination On the expiry or termination of the Agreement for any reason:
- if requested by the Supplier, the Customer will, and will ensure that the Members will, at their own expense within thirty (30) days return to the Supplier or otherwise dispose of in accordance with the Supplier's directions all fitting banks, materials, documents and papers whatsoever sent to the Customer or the Members and relating to the business of the Supplier which the Customer or the Members may have in their possession or under their control;
  - the Customer will immediately pay for all and any stocks of Labels and packaging which the Supplier has acquired for the purposes of the Agreement; and
  - the Supplier will be entitled to cancel any Orders placed by the Customer or the Members before the expiry or termination date, whether or not the Supplier has accepted such orders, without incurring any liability to the Customer or the Members. For outstanding Orders which are not cancelled, the Supplier may, at its discretion, request payment in advance of delivery of the Products.

**17. LAW AND JURISDICTION**

The Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed with the laws of South Africa. Each Party irrevocably agrees that the courts of South Africa shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Agreement, its subject matter or formation (including non-contractual disputes or claims).

**18. GENERAL**

- 18.1 Consumer Protection If the Agreement (or any provision in the Agreement) is regulated by or subject to the Consumer Protection Laws, it is not intended that the provisions (or any part of them) contravene any obligation or requirement of such Consumer Protection Laws. As such, the provisions of the Agreement (and each part of them) must be treated as being qualified, to the extent and the minimum amount necessary, so that they comply with the obligations and requirements of the Consumer Protection Laws. Nothing in the Agreement:
- requires the Supplier to assume risk or liability, to the extent that the law does not allow such an assumption of risk or liability; or
  - limits or excludes any warranties or obligations which are implied into the Agreement by the Consumer Protection Laws (to the extent applicable) or which the Supplier is obliged to provide under the Consumer Protection Laws (to the extent applicable), to the extent that such warranties or obligations cannot legally be limited or excluded.
- 18.2 General Compliance Each Party will, and will procure that any of its Group, agents and sub-contractors and in the case of the Customer, the Members, will, perform its obligations and exercise its rights pursuant to the Agreement in accordance with all applicable laws and regulations.
- 18.3 Anti-Bribery and Corruption Each Party will comply with its obligations under the Bribery Act 2010, the Foreign Corrupt Practices Act 1977 and any other applicable anti-corruption laws, regulations and requirements (if any) and, in any event, will not act in such a way which may breach the other Party's responsibilities under the Bribery Act 2010, the Foreign Corrupt Practices Act 1977 or any other applicable anti-corruption laws, regulations and requirements in South Africa. The Customer shall comply with the Supplier's anti-bribery and corruption policy as notified to the Customer from time to time.
- 18.4 Regulatory Notices If the Customer receives any communication from a Competent Authority or regulator which relates to the Agreement or the Products, then, to the extent permitted to do so, the Customer will immediately notify the Supplier in writing and provide a copy of the same.
- 18.5 Prohibition of Sales to Restricted Entities The Customer will not sell any Products at any time, to any individuals or other entities in any country if such sales are prohibited by regulations published by the Office of Foreign Assets Control of the United States Treasury (**OFAC**) from time to time, or by regulations issued by a successor agency of OFAC, unless the Customer receives confirmation in writing from the Supplier that the Supplier has obtained a valid license for the sale of such products to such individuals or entities in such countries.
- 18.6 Notices Any notice to either Party under or in connection with the Agreement will be in writing, in English and will be delivered personally or by first-class post at the address for that Party set out in the Agreement Details, or such other address as may be notified by a Party in writing from time to time.
- 18.7 Any notice will be deemed to have been received:
- if delivered personally at the time the notice is left at the proper address provided that it is left during business hours, or otherwise at the time that business hours resume at the place where the notice has been left; or
  - if sent by first class post, at 9.00 am on the third Business Day after posting.
- For the purposes of this Section, "writing" will not include email or other electronic communications. The provisions of this Section will not apply in relation to communications between the Parties which may be sent by email.
- 18.8 Assignment The Customer will not, without the prior written consent of the Supplier, assign, transfer, charge, mortgage, subcontract or deal in any manner with all or any of its rights or obligations under the Agreement.



- 18.9 The Supplier may at any time assign or novate all or any part of its rights and obligations pursuant to the Agreement, to any of its Group or to a successor. All references in the Agreement to the Supplier will be construed as including any Group company or successor to which such rights or obligations (or both, as applicable) are assigned or novated.
- 18.10 **Waiver** No failure or delay by either Party in enforcing or exercising any right, power or remedy under the Agreement or by law will constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy or of any breach will prevent or restrict the further exercise of any other right, remedy or any other succeeding breach. No waiver or discharge of any kind will be valid unless in writing and signed by an authorised representative of the Party against whom such waiver or discharge is sought to be enforced.
- 18.11 **Severability** If a court of competent jurisdiction or other competent body decides that any provision of the Agreement is void or otherwise unenforceable but would be valid and enforceable if appropriately modified then such provision will apply with the minimum modification necessary to make it valid and enforceable. If such a provision cannot be so modified, the provisions' invalidity or unenforceability will not affect or impair the validity or legal effect of any other provision of the Agreement.
- 18.12 **Third Parties**
- Unless expressly stated, the Agreement does not confer upon any third party any right or benefit.
  - If the Customer acquires the business and assets of a third party (or the majority or entirety of shares in such third party) (**Acquired Entity**), the Acquired Entity and/or all or part of their business shall only be added to, and entitled to order pursuant to and benefit from, the Agreement with the Supplier's prior written consent and when the Parties agree relevant Product prices and terms of supply for the Products to such Acquired Entity.
  - Without prejudice to Section 18.12(b), if (i) the Customer or all or part of its business is incorporated into, merged or otherwise combined with (in whole or in part) another company or business; or (ii) another company or business forming part of the Customer's Group wishes to order Products from the Supplier (or is merged or otherwise combined with (in whole or in part) the Customer); then such company or business shall not be entitled to order pursuant to, and benefit from, the Agreement unless the Supplier provides its written consent and relevant Product prices and terms of supply for the Products have been agreed.
- 18.13 **No Partnership or Agency** Nothing in the Agreement is intended to create a joint venture, agency relationship or partnership between the Parties. Except as expressly authorised in the Agreement, neither Party has any authority to, and will not, act, make representations or contract on behalf of the other Party.
- 18.14 **Variations** Except as expressly set out in the Agreement, no variation or addition to the Agreement will be valid unless it is in writing and signed by authorised representatives of each Party.
- 18.15 **Survival** Any provision of the Agreement which expressly or by implication is intended to come into or continue in force on or after the expiry or termination of the Agreement will remain in full force and effect.
- 18.16 **Entire Agreement** Except in the case of fraud or fraudulent misrepresentation:
- the Agreement sets out the entire agreement between the Supplier and the Customer and supersedes all prior representations, negotiations, understandings or agreements between them relating to the supply of the Products and any such agreements will be deemed to have expired on the Start Date; and
  - each Party acknowledges that, in entering the Agreement, it has not relied on any statement, representation, assurance or warranty other than those expressly set out in the Agreement.
- 18.17 **Counterparts** The Agreement may be executed in any number of counterparts, each of which is an original and all of which evidence the same agreement between the Parties.
- 19. DEFINITIONS**
- 19.1 **Agreement** means the agreement between the Supplier and the Customer for the sale and purchase of the Products in accordance with the Agreement Details and these General Terms;
- 19.2 **Agreement Details** means the separate document signed by each of the Parties which sets out the commercial terms and any special conditions;
- 19.3 **Business Day** means any day other than a Saturday, Sunday or gazetted public holiday in South Africa;
- 19.4 **Change of Control** means the sale of all or substantially all of the assets of a Party; any merger, consolidation, amalgamation, acquisition or any other combination of a Party with, by or into another company; or any change in the ownership of more than fifty percent (50%) of the capital stock or other ownership interests of a Party; in each case in one or more related transactions;
- 19.5 **Competent Authority** means any ministry, governmental department or authority or other regulatory agency responsible for regulating the marketing or distribution of medical devices in the Territory, including the South African Health Products Regulatory Authority;
- 19.6 **Confidential Information** means the existence of and terms of the Agreement, and all technical and pricing information relating to the Products (including know-how, designs and trade secrets) and all information relating to the Supplier's or the Customer's processes, plans, intentions, market opportunities, customers and business affairs, but will not include any information:
- that has been placed in the public domain other than through the fault of the Receiving Party;
  - that was independently developed by the Receiving Party without reference to the Confidential Information of the Disclosing Party;
  - that the Disclosing Party has approved in writing the particular use or disclosure of the information;
  - which was already known by the Receiving Party prior to the disclosure without an obligation of confidentiality; or
  - which is independently received from a third party without any obligation of confidentiality;
- 19.7 **Consumer Protection Laws** means the Consumer Protection Act, 2008 and/or any other similar laws in South Africa that apply to the purchase of goods;
- 19.8 **Customer Trademarks** means the brand names of the Private Label Products, and any other trademarks owned or controlled by the Customer;
- 19.9 **Data Protection Law** means all applicable data protection and privacy legislation relating to the protection of data and Personal Information and shall include POPIA and the Personal Information principles agreed to in the Agreement;
- 19.10 **Disclosing Party** means the Party disclosing Confidential Information to the Receiving Party;
- 19.11 **End User** means the end user of a Product as provided to them by the Customer or a Member;
- 19.12 **Force Majeure Event** means any circumstances not within a Party's reasonable control including:
- acts of God, fire, explosions, flood, drought, earthquake or other natural disaster;
  - epidemic, pandemic, outbreak or crisis;
  - war, hostilities, acts or threats of terrorism, riot, civil unrest, any law or action taken by a government or public authority;
  - labour or trade disputes, strikes, industrial action, embargoes, blockades or shortages of necessary raw materials; and
  - interruption or failure of utility service,
- save that a failure to make payment when due will not amount to a Force Majeure Event;
- 19.13 **Group** means, in relation to a Party, that Party and its parent undertakings and any subsidiary undertakings of such Party or its parent undertakings;
- 19.14 **Insolvency Event** means a Party:
- ceases to carry on its business;

- (b) has a receiver, administrative receiver, administrator or similar officer appointed over all or any part of its assets or undertakings who is not discharged within fifteen (15) days of such appointment;
- (c) makes an assignment for the benefit of, or a composition with its creditors generally or another arrangement of similar import;
- (d) goes into liquidation or is the subject of a winding up order otherwise than for the purposes of a bona fide amalgamation or reconstruction; or
- (e) if any similar event occurs under the law of any jurisdiction;
- 19.15 **IPR** (Intellectual Property Rights) means:
- (a) copyright and related rights, database rights, design rights (whether registered or unregistered), trade secrets, rights in know how and Confidential Information;
- (b) patents, rights to inventions, utility models, trademarks, trade names, IP addresses or IP address schemes, domain names and topography rights;
- (c) rights in goodwill and reputation;
- (d) applications for, or rights to apply for and be granted, renewals or extensions of, or registrations of any of the rights described in (a) or (b) above; and
- (e) any other intellectual property having a similar nature or equivalent effect which subsist or will subsist now or in the future anywhere in the world;
- 19.16 **Label** means a physical overlabel in accordance with the Packing Specification or the design to be printed directly onto the Product packaging, as applicable;
- 19.17 **Licensed IPR** means the Customer Licensed IPR or the Supplier Licensed IPR (as applicable);
- 19.18 **Members** means members of the Customer's buying group which are authorised by the Customer to order the Products at the Prices set out in the Agreement;
- 19.19 **Operator** means a person who Processes Personal Information for a Responsible Party in terms of a contract or mandate, without coming under the direct authority of that party;
- 19.20 **Packing Specification** means the latest version of the packing specification relating to each Product as provided by the Supplier, or as amended from time to time pursuant to Section 7.1 or 7.2 (as applicable) and held on the Supplier's system for approved artwork, which may contain information regarding Labels, pack design, box size and shape, contact lens blister packs and associated labelling and any other details or information regarding the packaging or labelling for any Product;
- 19.21 **Personal Information** means information relating to an identifiable, living, natural person, and where it is applicable, an identifiable, existing juristic person, including: (i) information relating to the race, gender, sex, pregnancy, marital status, national, ethnic or social origin, colour, sexual orientation, age, physical or mental health, well-being, disability, religion, conscience, belief, culture, language and birth of the person; (ii) information relating to the education or the medical, financial, criminal or employment history of the person; (iii) the biometric information of the person; (iv) the personal opinions, views or preferences of the person; (v) correspondence sent by the person that is implicitly or explicitly of a private or confidential nature or further correspondence that would reveal the contents of the original correspondence; (vi) the views or opinions of another individual about the person; and (vii) the name of the person if it appears with other personal information relating to the person or if the disclosure of the name itself would reveal information about the person;
- 19.22 **POPIA** means the Protection of Personal Information Act 4 of 2013;
- 19.23 **Private Label Products** means the products listed in the Agreement Details, which bear the Customer's name and/or the Customer Trademarks and the Supplier's CE mark on the packaging and/or Labels;
- 19.24 **Processing** means any operation or activity or set of operations, whether or not by automatic or non-automatic means, concerning Personal Information, including the collection, receipting, recording, organisation, storage, modification, retrieval, alteration, consultation, use, dissemination by means of transmission, distribution or making available in any other form; or merging, linking, as well as restriction, degradation, erasure or destruction of information. **Process** and **Processed** have correlative meanings;
- 19.25 **Products** means the Supplier Products and/or Private Label Products;
- 19.26 **Receiving Party** means the Party to which Confidential Information is disclosed under the Agreement;
- 19.27 **Responsible Party** means a party who alone or in conjunction with others, determines the purpose of and means for Processing Personal Information;
- 19.28 **Special Personal Information** means Personal Information concerning the religious or philosophical beliefs, race or ethnic origin, trade union membership, political persuasion, health or sex life or biometric information, criminal convictions, or criminal history of an individual;
- 19.29 **Supplier Products** means the products listed in the Agreement Details which bear the Supplier's name and/or the Supplier Trademarks and the Supplier's CE mark on the packaging and/or Labels;
- 19.30 **Supplier Trademarks** means the brand names of the Supplier Products and any other trademarks owned or controlled by the Supplier's Group;
- 19.31 **Term** means the period from the Start Date until the date of expiry or termination of the Agreement;
- 19.32 **Terms of Business** means the Supplier's standard terms for the supply of Products, as updated from time to time, the current version of which is attached as Schedule 1; and
- 19.33 **Year** means each twelve (12) month period from the Start Date.
- Any other capitalised terms used in these General Terms will have the meanings given in the relevant Agreement Details.
- 20. INTERPRETATION**
- 20.1 Except as otherwise provided in the Agreement or required by the context, the following principles will be applied in the interpretation of the Agreement:
- (a) the singular includes the plural and vice versa;
- (b) a reference to a statute or statutory provision is a reference to such statute or provision as modified or re-enacted from time to time (whether before or after the Start Date), and includes any subordinate legislation;
- (c) references to persons or entities, includes a reference to natural persons, any body corporate, unincorporated association, trust, partnership or other entity or organisation;
- (d) references to a person or entity, includes a reference to that person's or entity's successors or assigns;
- (e) references to agreements or documents are references to those agreements or documents as respectively amended from time to time;
- (f) the recitals and any other attachments to the Agreement form an integral part of the Agreement;
- (g) the headings in the Agreement will not affect the interpretation of the Agreement;
- (h) any reference to **writing** or **written** excludes email and other electronic communications unless otherwise expressly stated; and
- (i) whenever the words **include**, **includes**, **including** or **in particular** (or similar derivatives) are used, they are deemed to be followed by the words **without limitation**.

## Schedule 1

## Terms of Business of CooperVision South Africa (Pty) Ltd

**TERMS OF BUSINESS OF COOPERVISION SOUTH AFRICA (PTY) LIMITED (Supplier)****DEFINITIONS**

In these Terms, the following definitions apply:

**Business Day:** any day other than a Saturday, Sunday or gazetted national public holiday in the Republic of South Africa; **Contract:** as defined in Clause 1.2; **Change of Control:** the sale of all or substantially all of the assets of a Party; any merger, consolidation, amalgamation, acquisition or any other combination of a Party with, by or into another company; or any change in the ownership of more than fifty percent (50%) of the company's issued share capital or other ownership interests of a Party; in each case in one or more related transactions; **Consumer Protection Laws:** the Consumer Protection Act, 2008 and/or any other similar laws in South Africa that apply to the purchase of goods; **Customer:** the person, firm, or company that purchases Products from the Supplier under these Terms; **Data Protection Law:** any and all applicable laws relating to the protection of data and/or Personal Information and shall include, but not be limited to POPIA and the Personal Information principles agreed to in these Terms; **Delivery:** as defined in Clause 3.3; **Delivery Data:** as defined in Clause 3.2; **Due Data:** as defined in Clause 8.3; **End User:** the end user of a Product as provided to them by the Customer; **Group:** the Supplier, its subsidiaries or holding companies from time to time and any subsidiary of any such holding company from time to time; **Incofrms:** the International Commercial Terms 2020 (as subsequently amended or replaced); **IPR:** patents, rights to inventions, copyright and related rights, trade marks, trade secrets, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, domain names, rights in goodwill and reputation, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world; **Operator:** a person who Processes Personal Information for a Responsible Party in terms of a contract or mandate, without coming under the direct authority of that party; **Order:** as defined in Clause 1.1; **Parties:** the Customer and the Supplier and each of them a Party; **Personal Information:** information relating to an identifiable, living, natural person, and where it is applicable, an identifiable, existing juristic person, including: (i) information relating to the race, gender, sex, pregnancy, marital status, national, ethnic or social origin, colour, sexual orientation, age, physical or mental health, well-being, disability, religion, conscience, belief, culture, language and birth of the person; (ii) information relating to the education or the medical, financial, criminal or employment history of the person; (iii) the biometric information of the person; (iv) the personal opinions, views or preferences of the person; (v) correspondence sent by the person that is implicitly or explicitly of a private or confidential nature or further correspondence that would reveal the contents of the original correspondence; (vi) the views or opinions of another individual about the person; and (vii) the name of the person if it appears with other personal information relating to the person or if the disclosure of the name itself would reveal information about the person; **POPIA:** the Protection of Personal Information Act 4 of 2013; **Price:** as defined in Clause 8.1; **Processing:** any operation or activity or set of operations, whether or not by automatic or non-automatic means, concerning Personal Information, including the collection, receipting, recording, organisation, storage, modification, retrieval, alteration, consultation, use, dissemination by means of transmission, distribution or making available in any other form; or merging, linking, as well as restriction, degradation, erasure or destruction of information; **Process and Processed** have correlative meanings; **Products:** any products supplied or made available by the Supplier to the Customer; **Responsible Party:** a party who alone or in conjunction with others, determines the purpose of and means for Processing Personal Information; **Special Personal Information:** Personal Information concerning the religious or philosophical beliefs, race or ethnic origin, trade union membership, political persuasion, health or sex life or biometric information, criminal convictions, or criminal history of an individual; and **Terms:** the terms and conditions set out in this document.

**INTERPRETATION**

A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

Any reference to writing or written excludes email unless otherwise expressly stated.

**1. ORDER PROCESS AND CONTRACT FORMATION**

**1.1 Orders:** An order placed using the Supplier's approved sales channels will constitute an offer by the Customer to buy the Products in accordance with these Terms (Order). The Supplier may accept or decline an Order in whole or in part at its absolute discretion.

**1.2 Acceptance of an Order:** Following receipt of an Order, the Supplier may provide an Order acknowledgement containing an Order number. The acknowledgement is only to confirm the Order has been received and shall not constitute acceptance of the Order by the Supplier. No part of an Order shall be deemed to be accepted by the Supplier, and the Supplier shall have no obligation to supply any Products, unless and until the Supplier issues a formal written acceptance to the Customer for such Order (including by email or other electronic communication), or otherwise begins to fulfil the Order, at which point it will become a Contract. The Parties shall use the Order number in all correspondence relating to the Contract.

**1.3 Changing a Contract:** The Customer shall not be entitled to amend or cancel a Contract unless expressly agreed by the Supplier.

**1.4 Returns Policy:** The Customer will only be entitled to return Products at the sole discretion, and subject to the authorisation, of the Supplier, except where they are defective (in which case Clause 10 shall apply), or recalled by the Supplier under Clause 11. The Customer will contact the Supplier to obtain an authorisation form prior to returning any Product. Any returns that are not authorised or accompanied by an authorisation form will not be accepted. The following provisions will apply to authorised returns:

a) Products shall be returned at the Customer's cost and risk and the Customer shall be responsible for any loss or damage that is caused while the Products are in transit;

b) Products may be returned for exchange, credit or refund (at the Supplier's sole discretion) within ninety (90) days of the date of the original invoice on the conditions that the relevant Products: (i) have at least twelve (12) months' shelf life remaining; and (ii) are unopened, in their original packaging and in a resaleable condition (as determined by the Supplier, acting reasonably); and

c) Any coloured lenses may only be returned to the Supplier for a sealed exchange within thirty (30) days of the date of the original invoice and will otherwise be subject to the terms set out in this Clause 1.4.

**1.5 Terms:** These Terms apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. Any other correspondence or documents that the Parties use for the ordering of Products or administration will be for administrative convenience only and any terms and conditions included on such forms will not apply.

**1.6 Changes to Terms:** These Terms may be amended or updated by the Supplier from time to time, and the Customer will be subject to the current version of the Terms at the time the Contract is made.

**2. CUSTOMER'S OBLIGATIONS**

**2.1 The Customer will:**

a) not directly or indirectly sell, supply, distribute or otherwise make available Products to distributors, resellers or end-users outside South Africa (the Permitted Area). The Customer will apply the same restrictions to its own customers and take all necessary measures to prevent such sale by its customers. The Customer will be responsible for any damages incurred by the Supplier and its Group resulting from any breach of this obligation either by the Customer or its customer(s). The Supplier may request evidence and/or conduct a periodic audit of the Customer to ensure compliance with this obligation;

b) only sell the Products to individual consumers, and shall not, except with the prior written agreement of the Supplier, sell, supply, distribute or otherwise make available Products to any public or private entity or business;

c) not sell or require or obtain payment from any third party for Products provided by the Supplier for use only as trial or sample Products unless otherwise agreed in writing by the Supplier (including by email) and only as permitted by applicable laws, regulations and requirements. In relation to such trial or sample Products, the Supplier: (i) reserves the right to charge the Customer for their supply (including freight); and (ii) the Customer acknowledges that they are supplied at Supplier's sole discretion;

d) notify the Supplier by email to [qualityreturns@coopervision.co.uk](mailto:qualityreturns@coopervision.co.uk) immediately of any adverse event (or suspected adverse event) relating to the Products together with details of the adverse event, the name(s) of any affected End User(s), and the country into which Products were sold. In these Terms, adverse event will have the meaning given to it in the Regulations Relating to Medical Devices and *In Vitro* Diagnostic Medical Devices made under the Medicine and Related Substances Act, 1965. The Customer agrees to co-operate with the Supplier at all times with monitoring the safety, performance and recall of the Products. The Customer will maintain a list which contains details of the Products sold by the Customer, the name and address of the End Users (if applicable) and the country into which the Products have been sold, which will be made available to the Supplier promptly on request;

e) in addition to the requirement in Clause 2.1d), to enable the Supplier to allocate internal sales commission effectively, the Customer will provide a report to the Supplier every quarter detailing the quantity (on

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a region by region (and/or a store by store basis, if requested by the Supplier) of its onward sales of Products in the previous three (3) months; f) comply with all applicable laws, regulations, and professional codes, in particular for the purchase, sale or marketing of contact lenses. This includes (but is not limited to) the Medicines and Related Substances Act, 1965 (Act No. 101 Of 1965) of South Africa, the General Regulations Relating to Medical Devices and In Vitro Diagnostic Medical Devices and the Ethical Rules of Conduct for practitioners register under the Health Profession Act, 1974 (in particular Annexure 8, to the extent applicable). The Supplier may take any reasonable steps it deems necessary to verify the Customer's compliance with its obligations under this Clause; and g) notify the Supplier in writing in advance of any intended change of Control of the Customer and/or any intended change in the responsible optometrist.

2.2 The Customer agrees, where it is able to purchase nominated Products (from the Supplier) due to its accreditation as an authorised reseller of the Supplier, as part of a selective distribution network (Selective Distribution Network Products), to only sell the Selective Distribution Network Products to End Users or other accredited authorised resellers of the Supplier. In addition, the Customer agrees to comply with such additional terms and conditions as are notified to it, by the Supplier, from time to time in connection with the sale and marketing of the Selective Distribution Network Products.

### 3. DELIVERY

3.1 **DAP:** All Products will be supplied to the Customer on a DAP (Customer premises) basis as defined in Incoterms 2020. Subject to Clause 2.1c) of these Terms, standard delivery of each Order shall be made to the Customer at no additional charge. Any charge for premium or express delivery will be notified to the Customer by the Supplier in advance, and shall be invoiced and payable by the Customer in accordance with Section 8.1. The Supplier reserves the right, at its discretion, to introduce additional charges, and/or to adjust any existing charges, for the delivery of Products (including for standard delivery), at any time by giving the Customer thirty (30) days' notice in writing (including by email). This may include an increase or reduction of the delivery charges, as well as a completely new regulation of the freight terms.

3.2 **Time Frame:** The Supplier will use reasonable endeavours to deliver the Products by the date confirmed by the Supplier in the Contract or otherwise notified to the Customer (the Delivery Date). The Parties agree that the Delivery Date is an estimate and time will not be of the essence in relation to the Supplier's delivery obligations.

3.3 **Location:** Delivery of the Products will be complete when the Products have been unloaded at the Customer's premises (Delivery).

3.4 **Installments:** The Supplier may deliver the Products by installments, which shall be invoiced and paid for separately. Any delay in delivery or defect in an installment shall not entitle the Customer to cancel any other Contract or installment.

3.5 **Acceptance:** Each shipment of Products will be deemed to have been accepted by the Customer unless the Customer reports any damage or shortfall (other than hidden defects) in the Products within five (5) Business Days of receipt. Unless so notified, the quantity of any consignment upon despatch, as recorded by the Supplier, will be conclusive evidence of the quantity received by the Customer.

3.6 **Delay:** Except as set out in Clause 3.8 and Clause 17, if the Supplier has not delivered the Products (or any of them) by the Delivery Date then:

- the Customer may notify the Supplier in writing of the delay and require Delivery within ten (10) Business Days of such notice; and
- If Delivery of those Products does not take place within that extended period then the Contract (or the relevant part of it) will be deemed cancelled and the Customer may obtain similar products from an alternative supplier in respect of such Contract (on the condition that it notifies the Supplier in advance in writing).

3.7 The Parties agree and acknowledge that Clause 3.6 sets out the Customer's only remedy for any delay or failure by the Supplier to Deliver Products (in whole or in part) and any such delay or failure will not be a breach of these Terms. The Supplier will not be liable for any loss or damage arising from or relating to the Supplier's delay or failure to Deliver the Products including (without limitation) the Customer's costs of obtaining similar products from an alternative supplier.

3.8 **Delays caused by the Customer:** If the Customer fails to accept any shipment of the Products or Delivery is delayed due to a failure by the Customer to provide any information or instructions reasonably requested by the Supplier then:

- risk will be deemed to have passed to the Customer on the Delivery Date; and
- the Customer will reimburse the Supplier for any additional costs incurred (including for interim storage).

### 4. TITLE AND RISK

4.1 Title and risk in the Products will pass to the Customer on Delivery.

### 5. REMOVING OR CHANGING PRODUCTS

5.1 The Supplier will be entitled at any time without liability to the Customer to cease to supply all or any Product or change the design, materials, mode of manufacture, specifications, production, packaging, labeling or any other element of any Product.

### 6. EXCLUSIVITY

6.1 The Supplier will be the sole and exclusive supplier to the Customer of the Products, and subject to Clauses 3.6 and 17.2, the Customer will not purchase any of the Products from any third party.

### 7. INSOLVENCY

7.1 If the Supplier, acting reasonably, has reason to believe the Customer has or will become insolvent or bankrupt (as the case may be) or ceases, or threatens to cease, to carry on business, then without prejudice to any other right or remedy available to the Supplier, the Supplier shall be entitled to cancel any Contract or suspend any further deliveries under a Contract without any liability to the Customer.

### 8. PRICE AND PAYMENT

8.1 The Customer will pay the price specified in the Contract (Price) or, if no price is quoted, the price set out in the Supplier's price list as at the date of Delivery. The Price will be payable in the currency specified in the Invoice and is exclusive of: (i) the costs of additional or bespoke packaging; and (ii) value added tax or other applicable sales tax; which will be added to the Price, and shall be payable by the Customer in accordance with this Clause 8.

8.2 The Supplier may increase the Price of any Product on thirty (30) days' prior written notice (including by email) to the Customer.

8.3 The Customer must make all payments within sixty (60) days from the date of the relevant statement, or, if such date is not a Business Day, the next Business Day (Due Date). Time for payment will be of the essence. Payments will only be deemed received once the Supplier has received cleared funds. To continue to be eligible for any discounts agreed by the Supplier (where applicable), payment must be made by the Customer within 30 days from the date of the relevant statement. If the Customer fails to make payment within thirty (30) days from the date of each statement of account in any three (3) consecutive months or three (3) times or more in any six (6) month period then the Supplier may, at its discretion, review and amend the discount structure.

8.4 All sums payable by the Customer will be paid free and clear of all deductions or withholdings.

8.5 If any deductions or withholding from sums due are required by law, the Customer shall pay to the Supplier such sum as will, after the deduction or withholding has been made, leave the Supplier with the same amount as it would have been entitled to receive in the absence of any such requirement to make a deduction or withholding.

8.6 If the Customer fails to make any payment by the Due Date then:

- the Customer will pay interest on the unpaid amount (and any associated costs incurred by the Supplier) at a rate of 4% per annum above the base rate of the Supplier's receiving bank from time to time. Interest will accrue on a daily basis, from the Due Date until payment by the Customer and will be payable by the Customer on demand;
- the Supplier and its Group shall be entitled to suspend delivery of all Products to the Customer until any outstanding amount has been paid in full; and
- the Supplier will be entitled to review the customer price model structure and may, at its discretion remove any discount provided to the Customer.

8.7 The Prices offered under these Terms will apply only to the purchase of Products by the Customer. If the Customer acquires the business and assets of a third party (or the majority or entirety of shares in such third party), the third party shall only be entitled to order under these Terms with the Supplier's prior written consent.

### 9. PRODUCT WARRANTY

9.1 The Supplier warrants that on Delivery and for a period of six (6) months thereafter the Products will be free from defects in design, materials or workmanship. The Supplier will not be liable for a breach of this warranty where:

- the Customer allows any further use of such Products after giving notice of any defects to the Supplier under Clause 10; or
- the defect arises because the Customer has breached its obligations under Clause 10 or Clause 11.1.

### 10. DEFECTIVE PRODUCTS

10.1 If the Customer identifies that the Products do not comply with the warranty in Clause 9, it will notify the Supplier within five (5) Business Days and return the Products to the Supplier for inspection. If the Supplier confirms the defect in the relevant Products, the Supplier will, at its sole discretion, and subject to Clause 10.2, rectify the defect by replacing the defective Products with the same or substantially similar products as soon as reasonably possible or refund the Customer the price paid

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<p>for such Products. Any replacement Products supplied to the Customer in accordance with this Clause 10.1, will be subject to these Terms.</p> <p>10.2 If, having used commercially reasonable efforts, the Supplier is unable to provide replacement Products under Clause 10.1, then the Supplier will provide the Customer with a credit note or a refund (at the Supplier's sole discretion) equivalent to the Price paid for the affected Products.</p> <p>10.3 Except as provided in this Clause 10, the Supplier shall have no liability to the Customer for any failure of the Products to comply with the warranty set out in Clause 9.</p> <p>10.4 Any claim under the warranty in accordance with this Clause 10 will not entitle the Customer to cancel or refuse delivery of or payment for any other Contract, delivery or instalment.</p> <p><b>11. SAFETY AND PRODUCT RECALL</b></p> <p>11.1 The Customer will:</p> <ol style="list-style-type: none"> <li>comply at all times with, and will refer its employees, customers and/or End Users to, any Product information, instructions or guidelines provided by the Supplier concerning storage, application, handling, treatment, maintenance and use of the Products. The Supplier will not be liable to the Customer for any failure to store or otherwise handle the Products in accordance with information, instructions or guidelines provided by the Supplier;</li> <li>not modify or in any way interfere with Products (including by opening, tampering with, splitting up, re-packaging Products or altering any labelling (except with the Supplier's express written instructions)); and</li> <li>comply with the laws of South Africa and any other laws or regulations, regulatory policies, guidelines or industry codes which apply to the sale of the Products.</li> </ol> <p>11.2 <b>Complaints Process:</b> The Customer will immediately notify the Supplier of any complaints or other reports concerning the Products and will comply with all instructions from the Supplier regarding such complaints or reports. Any notification to a competent authority as a result of a quality or safety issue relating to Products (including any adverse event) will be made by the Supplier, except where the Customer does so in accordance with explicit written instructions from the Supplier.</p> <p>11.3 <b>Recall Process:</b> The Supplier may at its sole discretion:</p> <ol style="list-style-type: none"> <li>recall any Products already sold to the Customer or its customers (and either refund or credit the Price paid or replace the Products with the same or substantially similar products); or</li> <li>issue a notice to the Customer about the manner and use of any Product already sold to the Customer or its customers; and in each case, the Customer will fully and promptly cooperate with the instructions of the Supplier in the notice. The Customer will only initiate a recall with its customers or any End Users where it is acting on the express written instructions of the Supplier.</li> </ol> <p><b>12. INTELLECTUAL PROPERTY RIGHTS</b></p> <p>12.1 All IPR in or arising out of or in connection with the Products will be owned by the Supplier or its Group.</p> <p>12.2 <b>Trademarks:</b> The Supplier grants to the Customer a non-exclusive, revocable (at will) right to use the Supplier's name and trade marks (Trade Marks) on sales literature, point of sale materials and advertisements for the promotion of the Products in accordance with these Terms and any brand guidelines made available by the Supplier.</p> <p>12.3 Except as authorised in these Terms, the Customer will not use, apply to register or allow or encourage others to use or apply to register any of the Trade Marks or any other name or trade mark similar to those of the Supplier, its Group and/or the Products.</p> <p>12.4 The Customer will not, without the Supplier's prior written consent:</p> <ol style="list-style-type: none"> <li>alter, add to, deface or remove in any manner: (i) any packaging or labelling of the Products including but not limited to removing lens Products from their blisters or otherwise tampering with any packaging; (ii) the Trade Marks or any other name whether attached or affixed to the Products or their packaging or labelling;</li> <li>use, in relation to the Products, any trade marks other than the Trade Marks;</li> <li>use any trademarks or trade names confusingly similar to the Trade Marks or any other trademarks or trade names used by the Supplier; or</li> <li>use or register domain names that include the Trade Marks.</li> </ol> <p>12.5 Any attempt by the Customer to:</p> <ol style="list-style-type: none"> <li>challenge the validity of any of the IPR or the Supplier's or its Group's ownership of it; or</li> <li>do or authorise any third party to do any act which would or might invalidate or be inconsistent with any of the IPR or the Supplier's or its Group's ownership of it; or c) omit or authorise any third party to omit to do any act which, by its omission, would or might invalidate or be inconsistent with any of the IPR or the Supplier's or its Group's ownership of it; shall constitute a material breach of the Contract and these Terms.</li> </ol>	<p>12.6 The Customer will promptly notify the Supplier of any actual, threatened or suspected infringement of IPR coming to its notice.</p> <p><b>13. INDEMNITY</b></p> <p>13.1 The Customer will indemnify the Supplier, the Supplier's Group and their respective directors, officers, employees, sub-contractors and agents (the <b>Supplier Indemnified Parties</b>) against any and all claims, liability, damages, losses, fines, penalties, expenses and costs (including legal costs on a full indemnity basis) that the Supplier Indemnified Parties sustain or incur as a result, directly or indirectly, of any action, claim or proceeding that arises from a breach by the Customer of its obligations under Clauses 2.1f), 2.2, 11, 12 or 16.</p> <p><b>14. CONFIDENTIALITY</b></p> <p>14.1 Each Party (the <b>receiving party</b>) will keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to it by the other Party (the <b>disclosing party</b>), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, products and/or services which the receiving party may obtain. The receiving party will only disclose such confidential information to those of its employees, agents or subcontractors who need to know it for the purpose of performing the receiving party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors comply with the obligations set out in this Clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required by law, any governmental or regulatory authority or by a court of competent jurisdiction.</p> <p><b>15. LIMITATION OF LIABILITY</b></p> <p>15.1 Nothing in these Terms will limit or exclude any liability which cannot legally be limited or excluded, including but not limited to liability for:</p> <ol style="list-style-type: none"> <li>any loss directly or indirectly attributable to the Supplier's gross negligence or willful default or that of any other person acting for or controlled by the Supplier;</li> <li>death or personal injury caused by negligence; or</li> <li>fraud or fraudulent misrepresentation.</li> </ol> <p>15.2 Subject to Clause 15.1:</p> <ol style="list-style-type: none"> <li>the Supplier will not be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with any Contract or these Terms;</li> <li>except as expressly set out in these Terms, all other conditions, warranties or other terms which might be implied or incorporated into these Terms or a Contract, whether by statute, common law or otherwise, including implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose or the use of reasonable care and skill are excluded; and</li> <li>the Supplier's total aggregate liability to the Customer in respect of all other losses arising under, or in connection with, a Contract, whether in contract, tort (including negligence), or otherwise, and including (without limitation) loss of data or data breaches, shall in no circumstances exceed the Price of the Products paid or due under the Contract.</li> </ol> <p><b>16. DATA PROTECTION</b></p> <p>16.1 The Parties share the opinion that for the purposes of Data Protection Law and in connection with these Terms:</p> <ol style="list-style-type: none"> <li>the Customer and the Supplier are Independent Responsible Parties in relation to Personal Information collected by the Customer and provided to the Supplier under Clause 11.2 of these Terms, and the transfer of that Personal Information will be on a Responsible Party to Responsible Party basis; and</li> <li>the Supplier will be the Operator of the Customer (as Responsible Party) for any Personal Information of an End User received from the Customer and Processed by the Supplier to either deliver the Products directly to those End Users (where applicable) or allow the Customer to identify an Order (Customer Personal Information).</li> </ol> <p>A detailed description of the data processing activities, including the Customer Personal Data concerned, is set out below:</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr style="background-color: #4CAF50; color: white;"> <th style="text-align: left; padding: 5px;">Detail</th> <th style="text-align: left; padding: 5px;">Description</th> </tr> </thead> <tbody> <tr> <td style="padding: 5px;">Subject matter, nature and purpose of the Personal Information processing:</td> <td style="padding: 5px;">Subject Matter: Processing of Customer Personal Information to the extent necessary for the delivery of the Products to the End User or the Customer or for the Customer's identification of Orders.</td> </tr> </tbody> </table>	Detail	Description	Subject matter, nature and purpose of the Personal Information processing:	Subject Matter: Processing of Customer Personal Information to the extent necessary for the delivery of the Products to the End User or the Customer or for the Customer's identification of Orders.
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Detail	Description
	<p><b>Nature:</b> Processing activities including acquiring, Processing and storing will be undertaken by the Supplier.</p> <p><b>Purpose:</b> To enable the delivery of the Products to End Users or for the Customer's Identification of Orders.</p>
Duration of the Personal Information processing:	For the term of the relevant Contract or as provided under these Terms.
The type of Personal Information processed:	Identifying Personal Information including titles, names, addresses and postal codes. If a tracking system is offered, contact information including email addresses and telephone numbers. Information regarding the End User's ophthalmic health (including optical prescription and optical products used).
The categories of data subject:	The End Users who purchase the Products from the Customer.

16.2 The Customer shall ensure that:

a) all Personal Information, including Special Personal Information, disclosed or transferred to, or accessed by, the Supplier from the Customer is accurate and up-to-date; and

b) all Processing notices have been given, and (as applicable) all necessary consents have been obtained, by the Customer in accordance with Data Protection Law, to allow the Customer to disclose any Personal Information, which includes Special Personal Information, to the Supplier as envisaged under these Terms.

16.3 The Customer and Supplier each agree to comply with their obligations under Data Protection Law with respect to the Processing of Personal Information under or in connection with these Terms.

16.4 If a Party receives any complaint, notice or communication which relates to any actual or alleged non-compliance with Data Protection Law with respect to the Processing of Personal Information under or in connection with these Terms, that Party shall without undue delay notify the other Party in writing and the Parties shall cooperate with one another to resolve the same.

16.5 Where the Supplier acts as an Operator of the Customer (as contemplated by Clause 16.1(b) of these Terms, the Supplier shall:

a) only Process the Customer Personal Information on the documented instructions of the Customer to perform its obligations under these Terms, save that the Supplier may Process the Customer Personal Information if required to do so by any law to which the Supplier is subject and, in such a case, the Supplier shall (to the extent permitted by POPIA or such other applicable law) inform the Customer of that legal requirement;

b) immediately inform the Customer if, in the Supplier's opinion, the Customer's instruction breaches Data Protection Law;

c) ensure that appropriate, reasonable technical and organisational measures are in place to safeguard against the unauthorised or unlawful Processing of the Customer Personal Information and against accidental loss or destruction of, or damage to, the Customer Personal Information and such measures shall consist of the following, namely:

(i) the identification of all reasonably foreseeable internal and external risks to Personal Information and/or Special Personal Information in the possession or under the control of the Supplier;

(ii) establishing and maintaining appropriate safeguards against any such risks identified by the Supplier;

(iii) regularly verifying that the safeguards are effectively implemented; and

(iv) ensuring that the safeguards are continually updated in response to new risks or deficiencies in previously implemented safeguards.

d) ensure that any of its personnel who are authorised to Process the Customer Personal Information are bound by a duty of confidence to maintain the confidentiality of the Customer Personal Information; and

e) on conclusion of the Customer Personal Information Processing activities contemplated by these Terms, the Supplier will (as directed by the Customer) securely return or securely destroy the Customer Personal Information and all copies held by or on behalf of the Supplier, unless the Supplier is required to keep such Customer Personal Information for its compliance with applicable law.

16.6 The Customer consents to the Supplier appointing third-party Operators of Customer Personal Information. The Supplier shall inform the Customer of any intended changes concerning the addition or replacement of other third-party Operators, thereby giving the Customer the opportunity to object to such changes. The Supplier confirms that it

has entered or (as the case may be) will enter with the third-party Operator into a written agreement providing equivalent protection to the Customer Personal Information. The Supplier shall remain responsible for the acts and omissions of its sub-Operators.

16.7 The Customer acknowledges and agrees to the disclosure, transfer, storage and Processing of Personal Information outside of South Africa, in particular to and within any other country in which the Supplier has any affiliated offices in order to enable Supplier to perform its obligations under these Terms. Where Personal Information is transferred by the Supplier outside of South Africa, the Supplier shall address any applicable requirement to ensure an adequate level of data protection before transferring Personal Information by means of the implementation of binding corporate rules or the execution of appropriate data transfer agreements conforming to the requirements of POPIA.

16.8 The Supplier shall as soon as reasonably possible notify the Customer where it has reasonable grounds to believe that an unauthorised person has accessed or acquired the Customer Personal Information, taking into account the legitimate needs of law enforcement or any measures reasonably necessary to determine the scope of the compromise and to restore the integrity of the Supplier's information systems.

**17. FORCE MAJEURE**

17.1 The Supplier will not be in breach of these Terms or liable for delay in performing, or failure to perform, any of its obligations under a Contract if such delay or failure results from events, circumstances or causes beyond its reasonable control (Force Majeure Event). In such circumstances the Supplier reserves the right to defer the Delivery Date or cancel the Contract.

17.2 If the Supplier is prevented from performing its obligations under a Contract due to a Force Majeure Event for ninety (90) days or more, then the Customer may obtain similar products from an alternative supplier in respect of such Contract (on the condition that it notifies the Supplier in advance in writing).

**18. ANTI-BRIBERY**

18.1 Each Party will comply with its obligations under the Bribery Act 2010, the Foreign Corrupt Practices Act 1977 and any other applicable anti-corruption laws, regulations and requirements (if any) and, in any event, will not act in such a way which may breach the other Party's responsibilities under the Bribery Act 2010, the Foreign Corrupt Practices Act 1977 and any other applicable anti-corruption laws, regulations and requirements in South Africa. The Customer shall comply with the Supplier's anti-bribery corruption policy as notified to the Customer from time to time.

**19. CONSUMER PROTECTION**

19.1 If these Terms (or any part of them) are regulated by or subject to the Consumer Protection Laws, it is not intended that the Terms (or the relevant part of them) will contravene any obligation or requirement of such Consumer Protection Laws. As such, the Terms (and each part of them) must be treated as being qualified, to the extent and the minimum amount necessary, so that they comply with the obligations and requirements of the Consumer Protection Laws.

19.2 Nothing in these Terms: a) requires the Supplier to assume risk or liability, to the extent that the law does not allow such an assumption of risk or liability; or b) limits or excludes any warranties or obligations which are implied into these Terms by the Consumer Protection Laws (to the extent applicable) or which the Supplier is obliged to provide under the Consumer Protection Laws (to the extent applicable) to the extent that such warranties or obligations cannot legally be limited or excluded.

**20. GENERAL**

20.1 If the Customer receives any communication from a competent authority or regulator which relates to the Products or these Terms, then, to the extent permitted to do so, the Customer will immediately notify the Supplier in writing and provide a copy of the same.

20.2 Prohibition of Sales to Restricted Entities The Customer will not sell any Products at any time, to any individuals or other entities in any country if such sales are prohibited by regulations published by the Office of Foreign Assets Control of the United States Treasury (OFAC) from time to time, or by regulations issued by a successor agency of OFAC, unless the Customer receives confirmation in writing from the Supplier that the Supplier has obtained a valid license for the sale of such products to such individuals or entities in such countries.

20.3 These Terms and each Contract made under them is between the Supplier and the Customer and shall not, and cannot, be assigned (or otherwise transferred) by the Customer without the Supplier's prior written consent.

20.4 Any notice to either Party under these Terms or any Contract will be in writing, in English and addressed to the Party at its registered office (if it is a company) or its principal place of business (in any other case), and will be delivered personally, sent by pre-paid first class post or

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<p>commercial courier. The provisions of this Clause will not apply in relation to communications between the Parties which may be sent by email.</p> <p>20.5 Nothing in these Terms will confer upon any third party any right or benefit.</p> <p>20.6 No failure or delay by either Party in enforcing or exercising any right or remedy under these Terms or by law will constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy will prevent or restrict the further exercise of that or any other right or remedy. No waiver or discharge of any kind will be valid unless in writing and signed by an authorised representative of the relevant Party.</p> <p>20.7 If a court of competent jurisdiction or other competent body decides that any provision of these Terms is void or otherwise unenforceable but would be valid and enforceable if appropriately modified then such provision will apply with the minimum modification necessary to make it valid and enforceable. If such a provision cannot be so modified, the provisions invalidity or unenforceability will not affect or impair the validity or legal effect of any other provision of these Terms.</p> <p>20.8 Nothing in these Terms is intended to create a joint venture, agency relationship or partnership between the Parties. Except as expressly authorised in these Terms, neither Party has any authority to, and will not act, make representations or contract on behalf of the other Party.</p> <p>20.9 Except in the case of fraud or fraudulent misrepresentation:</p> <ul style="list-style-type: none"><li>a) each Contract (incorporating these Terms) sets out the entire agreement between the Parties and supersedes all prior representations, agreements, negotiations or understandings between them relating to the subject matter of that Contract including, without limitation, the Products supplied or to be supplied to the Customer; and</li><li>b) the Customer acknowledges that, in entering into any Contract, it has not relied on any statement, representation, assurance or warranty other than those expressly set out in these Terms.</li></ul> <p>20.10 The Customer agrees that the Supplier may:</p> <ul style="list-style-type: none"><li>a) make any reasonable enquiries to verify and research any details provided by the Customer on this application form;</li><li>b) access the files of any credit bureau to ascertain the Customer's credit profile when assessing the application and at any time during the currency of the Customer's account with the Supplier;</li><li>c) disclose the existence and the conduct of the Customer's account with the Supplier, whether still current or not, to any credit bureau or other credit grantor;</li><li>d) include the Customer's name on the Supplier's marketing mailing list provided that it will be removed if the Customer requests in writing.</li></ul> <p>20.11 <u>Law and Jurisdiction</u>: Each Contract made under these Terms, and any dispute or claim arising out of or in connection with them or their subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed with the laws of South Africa. Each Party irrevocably agrees that the courts of South Africa shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with these Terms and each Contract made under them, their subject matter or formation (including non-contractual disputes or claims).</p>	<p style="text-align: right;">CooperVision®</p>
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