

Terms of business of CooperVision Limited (Supplier)

Definitions

In these terms, the following definitions apply:

Approved Optical Outlet: a reputable business providing eye care services, operating at least one physical outlet, at which: (i) customers can be fitted with contact lenses; and (ii) at least one registered medical practitioner, registered optometrist or registered dispensing optician is present at all times, with whom customers can consult. An outlet will not be an Approved Optical Outlet if it only operates online, or if its core business is not the provision of eye care services (such as supermarkets, pharmacies or department stores, provided that a concession or department within a supermarket, pharmacy or department store may qualify as an approved optical outlet if it meets the criteria set out in this definition); **Business Day:** a day (other than a Saturday, Sunday or public holiday) when banks are open in London; **Contract:** as defined in Clause 1.2; **Customer:** a customer of the Supplier; **Delivery:** as defined in Clause 4.2; **Delivery Date:** as defined in Clause 4.1 below; **Directive:** the EC Medical Device Directive (93/42/EEC); **Due Date:** as defined in Clause 8.3; **EEA:** as defined in Clause 3.1(b); **Group:** the Supplier, its subsidiaries or holding companies from time to time and any subsidiary of any such holding company from time to time; **Incoterms:** the International Commercial Terms 2010 (as subsequently amended or replaced); **IPR:** Intellectual Property Rights as defined in Clause 12; **Order:** an order placed on the Supplier by the Customer for Products; **Parties:** the Customer and the Supplier and each of them, a Party; **Price:** as defined in Clause 8.1; **Products:** any products supplied by the Supplier to the Customer; **Relevant Saufion Products:** Products which are nominated by the Supplier and its Group as falling within the Supplier's "Optician Only policy" from time-to-time; **Terms:** the terms and conditions set out in this document.

1. Order process and contract formation

1.1 **Order:** An Order shall constitute an offer to buy the Products in accordance with these Terms. The Supplier shall be free to accept or decline an Order in whole or in part at its absolute discretion.

1.2 **Acceptance of an Order:** No Order, including any requested delivery date, shall be deemed to be accepted by the Supplier, and the Supplier shall have no obligation to supply the Products, unless and until the Supplier issues an order number to the Customer for such 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 except where the Supplier agrees in writing to an amendment or cancellation.

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

- a) Products will 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 that are contact lenses may be returned for exchange, credit note or refund (at the Supplier's sole discretion) within 90 days of the date of the original invoice provided that the relevant Products; i) have not less than 12 months' shelf life remaining; and ii) are in their original packaging and in a resaleable condition (as determined by the Supplier, acting reasonably); and
- c) Products that are not contact lenses will only be capable of being returned if they are defective (in which case Clause 10 shall apply) or they are the subject of a recall in accordance with Clause 11.

1.5 **Terms:** The Products provided by the Supplier will be subject only to these Terms and no other terms shall apply. Any other correspondence or documents that the Parties may use for the ordering of the Products or administration will be for administrative convenience only and terms and conditions included on such forms will apply only to the extent that they are consistent with these Terms. Without prejudice to this Clause 1.5, the Supplier may notify the Customer of any changes to these Terms by giving not less than 30 days' notice in writing.

2. Supplier's obligations

2.1 The Supplier shall manufacture, package and supply the Products in accordance with its obligations under the Directive and generally accepted industry standards.

3. Customer's obligations

3.1 The Customer shall:

- a) purchase the Products in accordance with any Contract and these Terms;
- b) not sell, distribute or otherwise make available Products under any of the trademarks of the Supplier or its Group to distributors,

resellers or end-users outside the European Economic Area (EEA). For the avoidance of doubt, nothing in these Terms shall be interpreted as restricting passive sales in the EEA (including sales via the internet);

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 and, 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) and shall procure that any end customer supplied with the Products by the Customer shall, to ensure the Supplier can comply with its obligations under the Directive (and relevant legislation applicable to the Products), notify the Supplier: (i) immediately of any serious adverse reaction relating to the Products; or (ii) promptly, within 2 Business Days, of any suspected adverse reaction relating to the Products, together with, in each case, details of the adverse reaction, the name of the affected end customer(s), and the country into which the Products were sold. The Customer agrees to co-operate with the Supplier at all times in connection with monitoring the safety, performance and recalling of Products. Pursuant to this Clause 3.1d) the Customer shall maintain a list which contains details of the Products sold by the Customer, the name and address of the end customers and the country into which the Products have been sold. This list shall be made available to the Supplier promptly on request;

e) subject to Clause 3.1g) sell the Products to individual consumers and shall not, except with the prior written consent of the Supplier, sell, supply or distribute the Products to any public or private entity or business;

Solutions – Minimum Order

f) not place an Order for contact lens solutions which is less than the Supplier's minimum order level for such Products. The Customer further acknowledges and agrees that all solution Products must be ordered in full cartons; and

Saufion Optician Only Policy

g) not resell Relevant Saufion Products other than to: (i) its retail customers; or (ii) other Approved Optical Outlets. For the avoidance of doubt, nothing in this Clause 3.1g) shall be interpreted as preventing or restricting online sales made by Approved Optical Outlets.

4. Delivery

4.1 **Time Frame:** The Supplier shall use reasonable endeavours to deliver the Products in accordance with the delivery date confirmed by the Supplier in the Contract, or sooner if notified by the Supplier giving reasonable prior written notice to the Customer (the **Delivery Date**). The Parties agree that the Delivery Date is an estimate and time shall not be of the essence in relation to the Supplier's delivery obligations.

4.2 **Location:** Delivery of the Products shall take place at the Supplier's premises at the time the Products are made available for dispatch (**Delivery**). At the Customer's request and sole cost and risk, the Supplier can arrange for suitable transport and insurance to deliver the Products to the Customer's premises or to an alternative address specified by the Customer within the United Kingdom if Products are being delivered directly to the Customer's patient.

4.3 **Instalments:** The Supplier may at its sole discretion deliver Products by instalments, which may be invoiced and paid for separately. References in these Terms to a Contract shall, where applicable, be read as references to instalments. No cancellation or termination of any instalment shall entitle the Customer to terminate or cancel any other Contract or instalment.

4.4 **Acceptance:** Each shipment of Products shall be deemed to have been accepted by the Customer if the Customer does not report any damage or shortfall in the Products within 5 Business Days of receipt of the Products.

4.5 **Delay:** Except where set out in Clause 4.7, where the Supplier has not delivered the Products by the Delivery Date then:

- a) the Customer may notify the Supplier in writing of the delay and require delivery within 10 Business Days of such notice; and
- b) if the Supplier fails to deliver within this extended period then the Customer may obtain similar products from an alternative supplier in respect of such Contract (provided that it notifies the Supplier in advance in writing).

4.6 The Parties agree and acknowledge that Clause 4.5 sets out the Customer's sole remedy for any delay or failure to deliver the Products and any such delay or failure shall not be a breach of these Terms and the Supplier shall not be liable for any loss or damage arising from or relating to the Supplier's delay or failure to deliver.

4.7 **Delays caused by the Customer:** If the Customer fails to accept delivery of any of the Products on the Delivery Date or delivery is delayed due to a failure by the Customer to provide information or instructions that have been requested by the Supplier in order to allow delivery then:

- a) the Products shall be deemed to have been delivered and risk shall be deemed to have passed to the Customer on the earlier of: i) the Delivery Date; or ii) 20 Business Days after the date of the Contract; and

b) the Supplier may store the Products until delivery at the Customer's sole cost and expense (including storage and insurance).

5. Transfer of title and risk

5.1 Risk of damage to, or loss of, the Products shall pass to the Customer on Delivery. All Products shall be supplied to the Customer on an FCA (Supplier premises) basis as defined in Incoterms 2010. Title to the Products shall not pass to the Customer until the Supplier has received the full invoiced price for the Products (including any applicable deliver charges) in accordance with Clause 8.

5.2 Where the Customer takes delivery of, or pays for, the Products in instalments, title to such Products shall pass to the Customer on the payment of the final instalment of the Products under that Contract.

5.3 Until title to the Products has passed to the Customer in accordance with Clause 5.1 or 5.2, the Customer shall:

- a) hold such Products as bailee and trustee for the Supplier;
- b) not mix or incorporate the Products with any other products and shall keep the Products identified that they are the property of the Supplier;
- c) keep the Products in satisfactory condition and not remove, deface or obscure any identifying mark / packaging on or relating to the Products;
- d) keep them insured on the Supplier's behalf (and produce such insurance policy if required by the Supplier); and
- e) subject to Clause 5.4, not be entitled to resell or use Products in the ordinary course of its business.

5.4 If, prior to title passing to the Customer:

- a) the Supplier has, acting reasonably, reason to believe the Customer is in breach of Clause 5.3, has or will become insolvent or bankrupt (as the case may be) or has not made payment by or on the Due Date, the Supplier may enter any of the Customer's premises (where the Products are stored) and remove, resell, or otherwise dispose of, such Products in the Supplier's sole discretion; or
- b) if the Customer sells (at arms-length and for full market value) or otherwise disposes of the Products or makes any insurance claim in respect thereof, the proceeds of any such sale or any such insurance proceeds shall belong to the Supplier and shall be held by the Customer on trust for the Supplier. The Supplier shall, in these circumstances, be entitled to suspend or stop all deliveries of Products (pursuant to a Contract or otherwise) and terminate the applicable Contract and any other agreement between the Parties.

6. Removing or changing Products

6.1 The Supplier shall 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 or any other element of any Product, provided that such change shall not materially impair the performance of such Product.

7. Exclusive supply

7.1 The Supplier shall be the sole and exclusive supplier to the Customer of the Products, except where the Supplier has given its prior written consent for the Customer to obtain the Products from a specified, authorised distributor. The Customer shall not be permitted or entitled to purchase any of the Products from any third party.

8. Price and payment

8.1 The Customer shall pay the price specified in the Contract (**Price**) or, if no price is quoted, the price set out in the Supplier's published price list as at the date of Delivery. The Price shall be payable in the currency specified in the Contract and is exclusive of: i) the costs of packaging, loading, unloading and insurance of the Products; and ii) the costs of delivery, where applicable, which will be notified to the Customer by the Supplier separately on a case-by-case basis; and iii) value added tax or other applicable sales tax; which shall be added to the Price, and shall be payable by the Customer in accordance with this Clause 8.1.

8.2 The Supplier may increase the Price for any Product on 30 days' prior written notice to the Customer.

8.3 The Customer shall make all payments under a Contract and these Terms by the date falling 30 days after the date of the relevant invoice, or, if such a date is not a Business Day, the next following Business Day (**Due Date**) and time for payment of invoices by the Customer shall be of the essence. Payments shall be only deemed received once the Supplier has received cleared funds.

8.4 All sums payable by the Customer shall be paid free and clear of all deductions or withholdings, save only as may be required by law. 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.

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

a) the Customer shall pay interest on any late payment (and associated costs) at a rate equal to 4% above the rate charged by the Supplier's receiving bank from time to time. Such interest shall accrue on a daily basis, from the date on which the payment became due until it is paid in full by the Customer and shall be payable by the Customer on demand; and

b) the Supplier shall be entitled to suspend deliveries of all Products to the Customer until any outstanding amount has been paid in full.

9. Quality of Products

9.1 The Supplier warrants to the Customer that upon Delivery and for a period of six (6) months from the Delivery Date, the Products shall be free from defects arising solely as a result of faulty design, materials or workmanship, provided always that the Supplier shall not be liable for a breach of this warranty;

- a) where the Customer allows any further use of such Products after giving notice of any defects to the Supplier under Clause 10; or
- b) the defect arises because the Customer breached its obligations under Clause 11.

10. Defective Products

10.1 If the Customer identifies a defect in the Products as a result of breach of Clause 9.1, it shall notify the Supplier within 5 Business Days. Promptly upon receipt of such notice, the Supplier shall, 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 possible after notification of the defect by the Customer. Where the Supplier supplies any replacement Products in accordance with this Clause 10.1, the Terms shall apply to such replacement Products.

10.2 If the Supplier, having used commercially reasonable efforts, is unable to provide replacement Products in accordance with Clause 10.1, then the Customer may return the Products and the Supplier will provide the Customer with a credit note or a refund (at the Supplier's sole discretion) for the Price paid for the defective Products.

10.3 The Parties acknowledge and agree that the remedies set forth in Clauses 10.1 and 10.2 shall be the Customer's sole and exclusive remedy for any defective Products supplied by the Supplier under these Terms and the Supplier shall have no further liability to the Customer in respect of the failure of the Products to comply with Clause 9.1. A claim in respect of a defect in accordance with this Clause 11 shall not entitle the Customer to cancel or refuse Delivery of or payment for any other Contract, delivery or instalment.

11. Safety and product recall

11.1 The Customer shall:

- a) comply at all times with, and shall refer its employees and customers to, any Product instructions or guidelines provided by the Supplier concerning the storage, application, handling, treatment, maintenance and use;
- b) not modify or in any way interfere with the Product (including by opening, tampering with, splitting up, re-packaging the Products or altering any labelling (except with the Supplier's written express instructions);
- c) ensure that the persons responsible for storage, application, handling, treatment, maintenance and use of the Products are given all relevant information required in order to comply with this Clause 11.1. The Supplier shall not be liable to the Customer for any failure to store or otherwise handle the Products in accordance with instructions or guidelines provided by the Supplier; and
- d) comply with the laws of England and Wales and the European Union and any other laws or regulations, regulatory policies, guidelines or industry codes which apply to the sale of the Products.

11.2 Complaints Process. The Customer will notify the Supplier of any complaints concerning the Products and will comply with instructions from the Supplier regarding issues, proceedings or negotiations relating to such complaints. Any notification to a competent authority as a result of a quality or safety issue relating to the Products shall be made by the Supplier, except where the Customer does so in accordance with explicit written instructions from the Supplier.

11.3 Recall Process: The Supplier may at its sole discretion:

- a) recall any of the Products already sold to the Customer or its customers (and either refund or credit the Price paid or replace the Products);
- b) issue any notification to the Customer about the manner and use of the Product already sold to the Customer or its customers; and in each case, the Customer shall fully and promptly cooperate with the instructions of the Supplier. The Customer shall only be entitled to initiate a recall where it is acting on the express written instructions of the Supplier.

12. Intellectual Property Rights

12.1 For the purposes of these Terms, **Intellectual Property Rights (IPR)** means patents, rights to inventions, copyright and related rights,

trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case 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.

12.2 All IPR in or arising out of or in connection with the Products shall be owned by the Supplier or its Group. The Customer acknowledges that, in respect of any third party IPR in the Products, the Customer's use of any such IPR is conditional on the Supplier obtaining a written licence from the relevant licensor on such terms that entitle the Supplier to license such rights to the Customer.

12.3 **Trademarks:** The Supplier grants to the Customer a non-exclusive and revocable (at will) right to use the Supplier's name and trade marks (**Trade Marks**) on sales literature, point of sale material and advertisements for the promotion of Products in accordance with these Terms.

12.4 Except for the purposes of these Terms the Customer shall not use, apply to register or allow or encourage others to use or apply to register the Supplier's name or any of the Trade Marks or any other name or trade mark similar to those of the Supplier, its Group and /or the Products.

12.5 The Customer shall not, without the prior written consent of the Supplier:

- a) alter, add to, deface or remove in any manner; i) any packaging or labelling for the Products including but not limited to removing Products, which are contact lenses, from their blisters or otherwise tampering with any packaging; ii) any reference to the Trade Marks or the Supplier or to any other name whether attached or affixed to the Products or their packaging or labelling;
- b) use, in relation to the Products, any trade marks other than the Trade Marks;
- c) use any trademarks or trade names confusingly similar to the Trade Marks or any other trademarks or trade names used by the Supplier; or
- d) use or register domain names that include the Supplier's Trade Marks without prior written consent of the Supplier.

12.6 Any attempt by the Customer to:

- a) challenge the validity of any of the IPR or the Supplier's or its Group's ownership of it; or
- b) 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 a Contract and these Terms.

12.7 The Customer shall promptly notify the Supplier of any actual, threatened or suspected infringement of IPR coming to its notice.

13. Indemnity

13.1 The Customer shall indemnify the Supplier and its directors, officers, employees, sub-contractors and agents (**Supplier Indemnified Parties**) against any and all claims, liability, damages, losses, expenses and costs (including legal costs on a full indemnity basis and whether incurred by or awarded against the Supplier Indemnified Parties) that the Supplier Indemnified Parties may sustain or incur as a result, whether directly or indirectly, of any action, claim or proceeding that arises as a result of a breach by the Customer of its obligations under Clauses 11 and 12.

14. Confidentiality

14.1 A Party (**receiving party**) shall 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 the receiving party by the other Party (**disclosing party**), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents or subcontractors who need to know it for the purpose of discharging 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 to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction.

15. Limitation of Liability

15.1 Nothing in these Terms shall limit or exclude the Supplier's liability for:

- a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors);
- b) fraud or fraudulent misrepresentation;
- c) breach of terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession);
- d) defective products under the Consumer Protection Act 1987; or e) where such limitation or exclusion would contravene all applicable laws.

15.2 Subject to Clause 15.1:

- a) the Supplier shall under no circumstances whatsoever 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 a Contract or these Terms;
- b) except as expressly set out in these Terms, each Party hereby excludes all other conditions, warranties or other terms which might have effect between the Parties, be implied or incorporated into these Terms or a Contract, 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 care and skill; and
- c) 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, shall in no circumstances exceed the full Price paid or to be paid under the Contract (provided that the Customer shall in addition be liable to pay the Price when due).

16. Anti-bribery

16.1 Each Party shall comply with its obligations under the Bribery Act 2010, the Foreign Corrupt Practices Act 1977 and any other applicable anti-corruption laws and regulations (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 and regulations. The Customer shall comply with the Supplier's anti-bribery corruption policy as notified to the Customer from time to time.

17. General

17.1 If either Party receives any communication from a regulator of the other Party which relates to the Products, then, to the extent permitted by the regulator, that Party will notify the other Party of the same as soon as reasonably practicable.

17.2 The Supplier shall not be liable for any failure to perform any of its obligations under these Terms and any Contract made under them caused by factors outside its reasonable control.

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

17.4 All notices addressed to either Party are to be in the English language to the Customer or the Supplier's registered office address.

17.5 Nothing in these Terms will confer upon any third party any right or benefit, whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

17.6 No delay or omission by either Party in enforcing or exercising any right, power or remedy will impair that right or be construed to be a waiver of it. A waiver by either Party of any of its rights or of any breach will not be construed to be a waiver of any other right, remedy or power or any succeeding breach. No waiver or discharge of any kind will be valid unless in writing and signed by an authorised representative of the relevant Party.

17.7 If a court of competent jurisdiction or other competent body decides that any provision of these Terms is void or otherwise ineffective but would be valid and effective if appropriately modified then such provision will apply with the modification necessary to make it valid and effective. If such a provision cannot be so modified, the provisions' invalidity or ineffectiveness will not affect or impair the validity or legal effect of any other provision of these Terms.

17.8 Nothing in these Terms creates a joint venture or partnership between the Parties. Except as expressly authorised in these Terms, these Terms will not create an agency relationship between the Parties and neither Party has any authority to, and will not, act, make representations or contract on behalf of the other Party.

17.9 Except in the case of fraud or fraudulent misrepresentation:

- a) these Terms and each Contract made pursuant to them set out the entire agreement between the Parties and supersede all prior representations, agreements, negotiations or misunderstandings between them relating to the subject matter including, without limitation, the Products; and

b) the Customer acknowledges that, in entering into these Terms and Contracts, it has not relied on any statement, representation, assurance or warranty other than those expressly set out in these Terms.

17.10 Governing law and jurisdiction: These Terms, each Contract made pursuant to them, 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 England and Wales. Each Party irrevocably agrees that the courts of England and Wales 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).