

AMO'S PURCHASE ORDER TERMS AND CONDITIONS

1. **Definitions.** "AMO" means Abbott Medical Optics Spain, S.I. Sucursal em Portugal (a branch registered in Portugal, under registration number 980262364 and whose registered office is at Praça Nuno Rodrigues dos Santos, no. 7, in Lisbon);

"Agreement" means the Purchase Order, these Terms and Conditions and the Specification (if any), which together shall constitute the terms and conditions of the parties' agreement;

"Purchase Order" means the agreement between AMO and the Vendor in respect of the order by AMO of goods or services containing details of the goods or services to be delivered;

"Specification" means any document issued or communicated to the Vendor prior to the supply of the goods or performance of the services identified in the Purchase Order and which identifies or specifies the quantities, type, performance criteria, standards or other quantitative or qualitative requirement of such goods or services;

"Vendor" shall mean the vendor of the goods or services identified in the Purchase Order.

2. **Basis of Agreement.** These Terms and Conditions apply to the Agreement to the exclusion of any other terms that the Vendor seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. The Purchase Order constitutes an offer by AMO to purchase the relevant goods or services specified in it in accordance with the Agreement. The Purchase Order shall be deemed accepted on the earlier of (a) the Vendor issuing a written acceptance of the Purchase Order; and (b) the Vendor doing an act consistent with fulfilling the Purchase Order, at which point the Agreement shall come into existence.

3. **Entire Agreement.** The Agreement shall constitute the entire agreement between the Vendor and AMO. The Purchase Order and any Specification may not be altered without the prior written agreement of AMO. AMO's prior written agreement is required for any substitution, variation, or partial delivery or performance of goods or services under the Purchase Order.

4. **Warranties.** Vendor warrants and represents that (a) the goods and/or services described herein shall be supplied in accordance with all applicable legislation and in accordance with the Purchase Order and any applicable Specification; (b) any goods supplied shall be new, of satisfactory quality and shall be free from all defects in design and workmanship; and (c) any services shall be performed with all due skill, care and diligence and in accordance with instructions from AMO.

5. **Defective Goods.** All deliveries of goods shall be accompanied by a delivery note referencing the Purchase Order number, items and quantities delivered. Where goods are received in bulk, the package or container shall show the net and gross weights. All goods are subject to inspection and may be rejected if (a) not in compliance with the Purchase Order and/or the Specification (if any); (b) not delivered on time; (c) delivered in insufficient quantity; or (d) provided otherwise than in accordance with clause 13 below. Goods may be rejected notwithstanding prior payment. Goods may be signed for as uninspected, in which case AMO will notify the Vendor of any rejection of goods as soon as reasonably possible. Rejected goods will be returned at Vendor's expense for transportation both ways and all related labour and packaging costs shall be borne by the Vendor. Without prejudice to any other rights it may have, if goods are rejected, AMO may, in its sole discretion, request delivery of replacement goods or cancel the order in whole or part without liability to the Vendor. No goods returned as defective shall be replaced without the written permission of AMO. These Terms and Conditions shall apply to any replacement goods supplied by the Vendor. Rejected goods shall be at the Vendor's risk as soon as rejection is notified to Vendor notwithstanding the same are in AMO's possession. AMO shall not be liable for payment in relation to rejected goods and, if payment was made in advance, the Vendor shall reimburse AMO in full (including VAT, where applicable) immediately upon request. AMO reserves the right to recover from the Vendor any costs it incurs in obtaining substitute goods from a third party.

6. **Defective Services.** Where AMO is of the reasonable opinion that any services the subject of the Purchase Order have been performed otherwise than in accordance with the Purchase Order and/or clause 13 below and/or with all due skill, care and diligence, it may at its sole discretion either direct the immediate re-performance of the defective services at the Vendor's

cost or cancel the order in whole or part without liability to the Vendor. AMO shall not be liable for payment in relation to rejected goods and, if payment was made in advance, the Vendor shall reimburse AMO in full (including VAT, where applicable) immediately upon request.

7. Vendor's Staff. The Vendor shall ensure that all staff engaged to carry out any work associated with the provision of the goods or performance of the services to be provided hereunder shall be appropriately qualified and experienced. Where the Vendor's staff are required to enter on to any site controlled by AMO pursuant to the Purchase Order, such staff shall comply with any rules or requirements established by AMO in respect of safety or otherwise for the site. The Vendor shall remove or exclude any of its staff from such site at AMO's reasonable direction and thereafter shall procure replacement staff at its own cost.

8. Indemnity. Vendor hereby agrees to indemnify and keep fully indemnified and hold harmless AMO from all direct and indirect (i) losses; (ii) liabilities; (iii) damages; (iv) costs; (v) expenses; and/or (v) claims (including any interest, penalties, and legal and other professional fees and expenses) which may be awarded against or incurred or paid by AMO: (a) arising out of or in connection with the supply of goods or as a result of services supplied under the Purchase Order, to the extent that such losses, liabilities, damages, costs, expenses and/or claims arises out of the breach, negligent performance or failure or delay in performance of the Agreement by the Vendor, its employees, agents or subcontractors; (b) arising out of or in connection with any breach by the Vendor of its obligations under the Purchase Order; or (c) arising from death, personal injury or damage to property of any third party arising out of, or in connection with, the supply or use of the goods supplied under the Purchase Order, to the extent that the claim is attributable to the acts or omissions of the Vendor, its employees, agents or subcontractors. The Vendor shall, at the request of AMO, take over the defence of any claim covered by this indemnity provided always that nothing in this clause 8 shall permit the Vendor to make any admission on behalf of or to settle any litigation or claim without the prior written consent of AMO.

9. Payment and Price. AMO shall pay the Vendor the price for the goods or services stated in the Purchase Order in accordance with the terms also therein stated. If no price is so stated, the goods or services shall be billed at the price last quoted (or billed) by the Vendor to AMO for the same or similar goods or services or at the prevailing market price whichever is lower and shall include all costs, charges and expenses incurred until goods are in the possession of AMO. The price of the goods or services stated in the Purchase Order is exclusive of amounts in respect of value added tax (VAT), but includes the costs of packaging, insurance and carriage of the goods.

10. Invoices. AMO shall not be liable to make payment in respect of invoices issued other than against its official order in accordance with the terms and conditions of the Purchase Order. Unless otherwise stated in the Purchase Order, invoices shall be payable thirty days following the later of (i) the date of the invoice; and (ii) delivery of all goods to the location specified in the Purchase Order and/or complete performance of all services. In the case of invoice query, AMO shall be entitled to withhold payment of the relevant amount pending resolution of the query, during which time the invoiced amount shall not be subject to any increase or interest charge, without prejudice to the interests which, according to law, are mandatory. Where goods are delivered in instalments or services delivered in stages, the Vendor may invoice each instalment or stage separately. The Vendor may not submit supplementary invoices in respect of tax or duty or similar charges.

11. Title to Goods. Title to all goods under the Purchase Order shall pass to AMO at the earliest to occur of the following: (a) on payment by AMO of any instalment of the price stated in the Purchase Order; or (b) when AMO receives possession of same whether or not payment thereof has been made or is due.

12. Risk. Goods shall be at the Vendor's risk until AMO signs for receipt of the same (regardless that title may have passed at an earlier time).

13. Compliance with Law. The Vendor guarantees that the goods or services to be provided hereunder shall be provided in compliance with all relevant laws in relation thereto.

14. **Insurance.** Vendor shall effect adequate insurance to cover its potential liabilities under the Purchase Order and, upon request, shall immediately provide evidence to AMO of such insurance cover. Where the Purchase Order relates to services, the Vendor shall maintain Employer's Liability insurance.

15. **Intellectual Property.** The Vendor warrants that: (a) the goods sold hereunder and every element thereof, the method of manufacture thereof, and the use of such goods in the customary manner or in a manner suggested or recommended by the Vendor or in a manner intended by AMO which is known to Vendor do not; and (b) in the provision of any services to be provided under the Purchase Order the Vendor will not infringe any patent, trade mark, copyright or other intellectual property right (whether registered or unregistered) and the Vendor agrees to indemnify and keep indemnified and hold harmless AMO and its employees against all direct or indirect: (i) losses; (ii) liabilities; (iii) damages; (iv) costs; (v) expenses and/or (v) claims resulting from any claim or proceeding alleging such infringement, provided AMO gives the Vendor notice thereof and permits the Vendor, if it so elects, to enter and defend, settle or otherwise terminate such claim or proceeding, provided always that nothing in this clause 15 shall permit the Vendor to make any admission on behalf of or to settle any litigation or claim without the prior written consent of AMO.

16. **Confidential Information.** The Vendor agrees to hold in confidence all methods, processes, techniques, shop practices, formulae, compounds, compositions, organisms, equipment, research data, marketing and sales information, customer lists, plans ("Confidential Information") and all other know-how and trade secrets ("Trade Secrets") owned by AMO or in AMO's possession and disclosed to Vendor as a result of the Purchase Order. The Vendor shall not use Confidential Information or Trade Secrets for itself or others (except as far as is necessary to perform its obligations under the Purchase Order) or disclose such information to any person without AMO's prior written consent. This obligation of confidentiality shall survive (i) in the case of Trade Secrets, indefinitely; and (ii) in the case of Confidential Information, for ten years from the date of the Purchase Order or until public disclosure of the Confidential Information otherwise than as a result of a breach of the Vendor's obligations of confidentiality under the Purchase Order.

17. **Discounts, Set Off.** Cash discounts and credit periods, if any, shall be computed as commencing with receipt by AMO of the invoice or of the goods or performance of the services, whichever is later. AMO may at any time or times without notice to the Vendor set off any liability of the Vendor to AMO against any liability of AMO to the Vendor (howsoever arising and whether any such liability is present or future, liquidated or unliquidated and irrespective of the currency of its denomination) and may for such purpose convert or exchange any currency at a market rate of exchange. Any exercise by AMO of its rights under this clause shall be without prejudice to any other rights or remedies available to it under the Agreement or otherwise.

18. **Interest.** The amounts due by AMO shall only bear interest under the mandatory terms legally foreseen.

19. **Implied Terms.** Nothing in the Purchase Order shall be construed as excluding any condition, warranty or term as to quality, suitability or fitness for purpose of goods or services supplied or rendered pursuant to the Purchase Order, implied into the terms of the Purchase Order under or by virtue of the Legal Framework on the Sale and Warranty of Consumer Goods, approved by the Decree-Law no. 67/2003, of 8 April or any other relevant statutory provision or otherwise.

20. **Waiver.** A waiver of any right or remedy under the Agreement is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by AMO to exercise any right or remedy provided under the Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

21. Assignment and Sub-Contracting. AMO may at any time assign, transfer, charge, subcontract or deal in any other manner with any or all of its rights or obligations under the Agreement. The assignment of the contractual position might be made in favour of companies which belong to the same group. The Vendor shall not assign, transfer, charge or sub-contract the performance of the Purchase Order or any part thereof without the written permission of AMO. Breach of this condition shall entitle AMO to cancel the Purchase Order or at its election any part thereof.

22. Liability. Nothing in the Purchase Order shall prohibit or hinder the exercise of either Party's rights with respect to death or personal injury caused by the negligence of the other Party. The rights, powers and remedies provided in the Purchase Order are cumulative and not exclusive of any rights, powers and remedies provided by law, or otherwise.

23. Termination. AMO may terminate the Agreement with immediate effect by giving written notice to the Vendor if the Vendor becomes subject to any of the following events:

(a) the Vendor suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of article 3 of the Code of Recuperation and Insolvency; or

(b) the Vendor commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than these events take place for the sole purpose of a scheme for a solvent amalgamation of the Vendor with one or more other companies or the solvent reconstruction of the Vendor; or

(c) (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Vendor, other than for the sole purpose of a scheme for a solvent amalgamation of the Vendor with one or more other companies or the solvent reconstruction of the Vendor; or

(d) the Vendor is the subject of a bankruptcy petition or order; or

(e) a creditor or encumbrancer of the Vendor attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days; or

(f) any event occurs, or proceeding is taken, with respect to the Vendor in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 23(a) to clause 23(h) inclusive; or

(g) the Vendor suspends, or threatens to suspend, or ceases or threatens to cease to carry on, all or substantially the whole of its business; or

(h) the financial position of the Vendor deteriorates to such an extent that in the opinion of AMO the capability of the Vendor adequately to fulfil its obligations under the Agreement has been placed in jeopardy.

(i) (being an individual) the Vendor dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

Termination of the Agreement, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination of the Agreement shall continue in full force and effect.

24. Notices. Any notice or other communication given to a party under or in connection with the Agreement shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first-class post, recorded delivery, commercial courier, fax or e-mail. A notice or other communication shall be deemed to have been received: (a) if delivered personally, when left at the address referred to in this clause 23; (b) if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second business day after posting; (c) if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, (d) if sent by fax or e-mail, 24 hours after transmission. The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

25. **Severance.** If any court or competent authority finds that any provision of the Agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Agreement shall not be affected. If any invalid, unenforceable or illegal provision of the Agreement would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

26. **Third Party Rights.** A person who is not a party to the Agreement shall not have any rights under law to enforce any term of the Agreement.

27. **Governing Law & Jurisdiction.** The Purchase Order and any dispute or claim arising out of or in connection with it (including any non-contractual claims or disputes) shall be governed by and construed in accordance with the laws of Portugal and the parties irrevocably submit to the exclusive jurisdiction of the courts of Portugal.