

# Consignment Terms Agreement

## INTRAOCULAR LENS CONSIGNMENT TERMS AND CONDITIONS

Unless a written agreement has been executed between you and AMO Sales and Service, Inc. ("J&J Vision"), the following terms and conditions apply if you (hereinafter "Consignee") are purchasing intraocular lenses ("IOLs") from J&J Vision on a consignment basis:

**1. Title.** The Consignment shall remain property of J&J Vision until used by Consignee and removed from Consignee's inventory. J&J Vision shall have a security interest in all goods covered by this Agreement as to all other creditors of Consignee for purposes of attachment, perfection and priority of competing security interests in accordance with Article 9 of the California Commercial Code. Consignee consents to J&J Vision filing any documents, including financing statements under the Uniform Commercial Code, and agrees to execute any documents, which may be necessary to protect J&J Vision's property interest in the goods covered by this Agreement. J&J Vision shall have the right to adjust the amount held as Consignment from time to time at its discretion. Consignee agrees that all IOLs under this Agreement will be used at Consignee's facility and shall not be re-sold or otherwise diverted.

**2. Loss or Damage.** Except as expressly set forth herein, Customer shall be responsible for all loss or damage to the Consignment. Customer shall, at its own expense, insure the Consignment for its full value against all foreseeable risk, including fire, flood, weather, earthquake, theft, riots, strikes, war and terrorism. Customer agrees to store the Consignment in accordance with the instructions contained on the applicable product labeling. Customer, at its expense, shall be solely responsible to return each IOL remaining in the Consignment on or before 12 months prior to the expiration date for each IOL and will pay for any IOL not returned in accordance with the terms described in Section 4 below. Customers will not be responsible for any damage to the Consignment either (1) caused by a "force majeure" event (defined as acts of God, fire, flood, earthquake, or explosion), or (2) if the damage was caused through no fault of the Customer. If any IOLs are damaged as a result of the Customer's fault, J&J Vision may (in its discretion and under appropriate circumstances) charge Customer in an amount determined by J&J Vision not to exceed the amount required to be paid under Section 3 below.

**3. Payment.** Within forty-eight (48) hours of the removal of an IOL from the Consignment, Consignee shall order a replacement IOL from J&J Vision. Upon receipt of such order, J&J Vision shall invoice Consignee in accordance with J&J Vision prices then in effect and ship Consignee the replacement IOL unless Consignment is to be adjusted in accordance with the terms described in Section 2 of this Agreement. Payment shall be made by Consignee based upon the invoice billing terms. If payment is not made within the terms noted on the respective invoice, J&J Vision may charge interest on any past due balance at the lower of (1) 1.5% percent per month, or (2) the maximum rate then allowed by law, until the payment is made in full.

**4. Audit and Report.** J&J Vision shall have the right to audit the Consignment (which includes, without limitation, the right to physically inspect the Consignment and/or records relating to the Consignment) at any time and from time to time while this Agreement remains in full force and effect. J&J Vision may also request (no more than once during any twelve 12 month period) that Consignee provide written confirmation (in the form of a report provided by J&J Vision) to verify the balance of the Consignment and Consignee shall respond to each such request within thirty (30) days of receipt of from J&J Vision. Any shortages shall be replaced and paid for by the Consignee in accordance with the terms described in Section 4 of this Agreement.

**5. Term and Termination.** The term of this Agreement continues until terminated by either party pursuant to this Section 6. This Agreement may be terminated for any reason by either party on thirty (30) days prior written notice. J&J Vision may terminate this Agreement immediately upon breach of its terms by Consignee or in the event that Consignee makes an assignment for the benefit of creditors, files bankruptcy, or becomes insolvent. Upon termination, Consignee at its expense shall immediately return the Consignment to J&J Vision. J&J Vision shall have the right to conduct a termination audit. Consignee agrees to pay for any shortages noted in such audit in accordance with the terms described in Section 4 of this Agreement. The following shall survive the termination of this Agreement: (1) any payment obligations that arose on or before the termination date; (2) Consignee's obligation to return the Consignment, and (3) Consignee's obligation to pay for any loss or damage that occurred to the Consignment on or before the termination date.