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 initial shipment of IOLs, together with replacement IOLs (collectively, 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 these terms and conditions ("Consignment 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 Consignment. 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

J&J Vision shall be responsible for all loss or damage to the Consignment until Consignee receives and accepts the Consignment, except for the loss or damage caused by the negligence of Consignee. Consignee shall, at its own expense, insure Consignment for its full value against all foreseeable risk, including fire, flood, weather, earthquake, theft, riots, strikes, war and terrorism. Consignee will be invoiced for any damaged IOLs in an amount determined by J&J Vision (in its sole discretion) not to exceed the prices then in effect. Consignee agrees to store the Consignment in accordance with the instructions contained on the product labeling.

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’s prices then in effect and ship Consignee the replacement IOL unless the Consignment is to be adjusted in accordance with the terms described in Section 1. Payment shall be made by Consignee net thirty (30) days from the invoice date. If payment is not made within thirty (30) days from the invoice date, interest at the maximum rate then allowed by law may be added until 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 Consignment 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 3.

5. Termination

This Consignment Agreement may be terminated for any reason by either party on thirty (30) days prior written notice. J&J Vision may terminate this Consignment 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 3. 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.