

The Customer's attention is particularly drawn to the provisions of clause 10.

1 INTERPRETATION

1.1 **Definitions.** In these Conditions, the following definitions apply:

Business Day: a day other than a Saturday, Sunday or public holiday in England.

Conditions: these terms and conditions as amended from time to time in accordance with clause 14.6.

Contract: the contract between the Supplier and the Customer for the supply of Goods and/or Services in accordance with these Conditions.

Customer: the person or business which purchases the Goods and/or Services from the Supplier.

Delivery Location: has the meaning set out in clause 4.2.

Force Majeure Event: an event beyond the reasonable control of the Supplier.

Goods: the goods (or any part of them) set out in the Order.

Order: the Customer's order for the supply of Goods and/or Services, as set out in the Customer's order form or e-mail to the Supplier, or Supplier Price List, as the case may be.

Services: the services as set out in writing by the Supplier to the Customer.

Supplier: Menicon Limited registered in England and Wales with company number 1043189 and VAT number GB218137575.

2. BASIS OF CONTRACT

2.1 The Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Conditions.

2.2 The Order shall only be deemed to be accepted either when the Supplier communicates its acceptance of the Order by the Supplier's usual methods of communication, or when the Supplier commences work on the Order, at which point and on which date the Contract shall come into existence and the Customer shall be bound by these Conditions under the Contract.

2.3 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Supplier which is not set out in the Contract.

2.4 Any samples, drawings, descriptive matter or advertising issued by the Supplier and any descriptions of the Goods or illustrations or descriptions of the Services contained in the Supplier's brochure are published for the sole purpose of giving an approximate idea of the Services and/or Goods described in it. They shall not form part of the Contract or have any contractual force.

2.5 These Conditions 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.

2.6 Any quotation given by the Supplier to the Customer upon the Customer's enquiry shall not constitute an offer, and is only valid for a period of 30 days from its date of issue.

3. GOODS

3.1 The Goods are described in the Supplier's brochure.

3.2 The Supplier reserves the right to amend the specification of the Goods if required by any applicable statutory or regulatory requirements.

4. DELIVERY OF GOODS

4.1 The Supplier shall deliver the Goods either by first class post or by courier (at the Customer's expense) to the location set out in the Order or such other location as the parties may agree (**Delivery Location**) at any time after the Supplier has accepted the Customer's order. If the Customer does not specify a delivery method, the Goods will be supplied by first class post.

4.2 The Goods are automatically insured against loss or damage during the course of transit to the Delivery Location.

4.3 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location.

4.4 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.5 If the Supplier fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event, the Customer's failure to provide the Supplier with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.

4.6 The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

5. QUALITY OF GOODS AND WARRANTIES

5.1 The Supplier warrants that on delivery, the Goods shall conform in all material respects with their description in the Supplier's brochure and be free from material defects in design, material and workmanship.

5.2 Subject to clause 5.3, if the Goods do not comply with the warranty set out in clause 5.1 and the Customer returns the defected Goods (in the original packaging provided) to the Supplier's place of business within 30 days together with a completed credit exchange and returns form (which can be found on the reverse of the specification sheet) clearly indicating the nature of the defect, provided there are no signs of wear and tear, wilful damage or mishandling of the Goods, the Supplier shall, at its option, replace the defective Goods at no extra charge, or issue full credit for the price of the defective Goods. Should replacement Goods be reordered but then cancelled, the provisions of clause 11 shall apply.

5.3 The Supplier shall not be liable for the Goods' failure to comply with the warranty in clause 5.1 if:

- (a) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, use or maintenance of the Goods or (if there are none) good trade practice;
- (b) the Customer alters or repairs such Goods without the written consent of the Supplier;
- (c) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions;
- (d) the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
- (e) We do not accept lens care products for exchange or credit other than supply error or a suspected manufacturer fault.
- (f) For soft disposable blister lenses, we will accept return for credit or exchange providing the product is within the current product range and has a minimum of 24 months remaining shelf life, The product must be in re-saleable condition (unmarked, undamaged & unopened).

5.4 Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.

6. WITH EXCHANGE WARRANTY

6.1 The Supplier offers an optional, additional "With Exchange" warranty which can only be selected at the point of ordering any Menicon Limited RGP and Soft Lathe Cut Lenses. The Customer cannot add the "With Exchange" warranty to an Order once the Supplier has accepted and begun processing it.

6.2 The "With Exchange" warranty allows the Customer to exchange or credit any Menicon Limited RGP and Soft Lathe Cut Lenses (provided the credit exchange and returns form is completed in full and returned):

- a) Two 'free of charge' (FOC) exchanges are available within the warranty period from the date the original order was dispatched.
- b) During the warranty period, if the decision is made to change to an alternative lens design (with a different price) the original lens will be credited at 75% of the lens price only and a new order will be processed with the option of warranty.
- c) If no exchange is required, a credit of 75% of the lens price (excluding warranty) will be issued provided the return is within the warranty period. For the avoidance of doubt, if the "Without Exchange" warranty is selected by the Customer prior to an Order being accepted, the Customer shall only have the benefit of the manufacturer's warranty as detailed at clause 5 of these Conditions.

7. TITLE AND RISK

7.1 The risk in the Goods shall pass to the Customer on completion of delivery.

7.2 Title to the Goods shall not pass to the Customer until the Supplier receives payment in full (in cash or cleared funds) for the Goods and any other goods that the Supplier has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment.

7.3 Until title to the Goods has passed to the Customer, the Customer shall:

- (a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
- (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

- (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery;
- (d) notify the Supplier immediately if it becomes subject to any of the events listed in clause 11.1(b); and
- (e) give the Supplier such information relating to the Goods as the Supplier may require from time to time.

7.4 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 11.1(b), then, without limiting any other right or remedy the Supplier may have, the Supplier may at any time:

- (a) require the Customer to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and
- (b) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

7.5 Where the Supplier provides fittings sets or fitting banks to the Customer free of charge, these goods, as well as any subsequent restocking thereof, remain the property of Menicon Limited 'the Company' and the Company reserves the right to request the return of these goods upon written request. The Company furthermore reserves the right to invoice the Customer (at cost) in the event that these goods are unable to be returned.

8. SUPPLY OF SERVICES

8.1 The Supplier shall provide the Services to the Customer in accordance with the Customer's Order in all material respects.

8.2 The Supplier shall use all reasonable endeavours to meet any performance dates for the Services specified upon the Supplier's acceptance of the Order, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.

8.3 The Supplier shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.

8.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

8.5 The Customer shall:

- (a) ensure that the terms of the Order are complete and accurate;
- (b) co-operate with the Supplier in all matters relating to the Services; and
- (c) provide the Supplier with such information and materials as the Supplier may reasonably require to supply the Services, and ensure that such information is accurate in all material respects.

8.6 If the Supplier's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (Customer Default):

- (a) the Supplier shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
- (b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 8.6; and
- (c) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

9. CHARGES AND PAYMENT

9.1 The price for Goods and Services shall be the price set out in the Order 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 of the Goods or Services is exclusive of insurance and delivery or carriage of the Goods, which shall be paid by the Customer when it pays for the Goods or Services.

9.2 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (VAT). The Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods.

9.3 In respect of Goods, the Supplier shall invoice the Customer on completion of delivery. In respect of Services, the Supplier shall invoice the Customer on the Supplier's completion of the Services or at a relevant stage of the Services.

- 9.4 The Customer shall pay each invoice submitted by the Supplier in the currency stated on the invoice only within 30 days of the date of the invoice to a bank account nominated by the Supplier and time for payment shall be of the essence of the Contract.
- 9.5 The Supplier shall send the Customer a statement at the end of the month to confirm the Goods delivered during the course of the month and the total price payable for such Goods.
- 9.6 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 4% per annum above The Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 9.7 The Supplier also reserves the right to charge the Customer a fee for time spent in recovering the debt if this is past due. The Supplier will notify the customer in writing once proceedings have reached a stage where this fee becomes chargeable.
- 9.8 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding except as required by law. The Supplier may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

10. LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

- 10.1 Nothing in these Conditions 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 the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); or
 - (d) breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession);.
- 10.2 Subject to clause 10.1:
- (a) the Supplier shall under no circumstances whatever 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 the Contract; and
 - (b) the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the total price paid by the Customer in connection with the Contract.
- 10.3 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 10.4 This clause 10 shall survive termination of the Contract.

11. TERMINATION

- 11.1 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:
- (a) the other party commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within 7 days after receipt of notice in writing to do so;
 - (b) the other party 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 (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply or enters into any formal insolvency proceeding in any jurisdiction; or
 - (c) the other party's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 11.2 Without limiting its other rights or remedies, the Supplier may suspend the supply of Services or all further deliveries of Goods under the Contract with immediate effect by giving written or verbal notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment or the Customer becomes subject to any insolvency event listed in clause 11.1(b) or the Supplier reasonably believes that the Customer is about to become subject to any of them.

- 11.3 On termination of the Contract for any reason:
- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has yet been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt; and
 - (b) the Customer shall return all of the Goods which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises (or any third parties premises where the goods are stored) and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.

12. CANCELLATION

- 12.1 The Customer reserves the right to cancel their Order provided that the Customer gives written notice to the Supplier of their intention to cancel their Order, prior to despatch. If the Supplier has already begun processing the Order at the time when the Customer gives written notice to cancel their Order, the Supplier reserves the right to withhold up to 25% of the value of the Goods as a cancellation fee.

13. FORCE MAJEURE

- 13.1 The Supplier shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event. If the Force Majeure Event prevents the Supplier from providing any of the Services and/or Goods for more than 4 weeks, the Supplier shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

14. GENERAL

- 14.1 **Assignment and other dealings.** Only the Supplier may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party.

14.2 Notices.

- (a) Any demand, notice or other communication given to a party under or in connection with the Contract shall be in writing and may be delivered personally or sent by post to the registered office address or such other address notified in writing by the parties from time to time. Any such notice, demand or other communication shall be deemed to have been served on the Second Business Day after posting if posted by first class pre-paid post or recorded delivery or at the time of delivery if delivered personally.
- (b) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

- 14.3 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

- 14.4 **Waiver.** A waiver of any right under the Contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor prevent or restrict its further exercise of that or any other right or remedy.

- 14.5 **Third parties.** A person who is not a party to the Contract shall not have any rights to enforce its terms.

- 14.6 **Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the Supplier. The Supplier reserves the right to revise all prices and conditions without notice to the Customer.

- 14.7 **Governing law and jurisdiction.** This 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 in accordance with the law of England and Wales and the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).