Every product (“Product”) purchased by, and every service (“Service”) rendered to Buyer or any of its subsidiaries or affiliates from a supplier of Products or provider of Services (“Supplier”) is sold or rendered subject to the following terms and conditions.

1. ACCEPTANCE. Supplier shall be bound by this Purchase Order until the first to occur of: (a) Supplier returns to Buyer an acknowledgment of the order, (b) Supplier otherwise expresses its acceptance of the order, or (c) Buyer delivers to Supplier any of the Products or Services ordered. Any acceptance of the order shall be made upon the terms and conditions stated on the Purchase Order (including these Terms and Conditions), and no additional terms or modifications thereto shall bind Buyer unless expressly assented to in writing by Buyer. All specifications and data submitted by Supplier shall be deemed incorporated into the Purchase Order. Delivery of any Products or Services shall be in accordance with the terms and conditions of the Purchase Order. Acceptance of any part of this order shall not bind Buyer to accept future shipments or performance of Products or Services, shall not deprive Buyer of the right to return Products already accepted and shall not be deemed a waiver of Buyer’s right to cancel or return all or any part of the Products because of failure to conform to order or latent or patent defects or other breach of warranty. Notwithstanding acceptance, Buyer may at any time and from time to time make changes in the requirements of the order, and Supplier shall charge Buyer for all Products and Services furnished in accordance with such changed requirements.

2. PREVALENCE TERMS. These Terms and Conditions shall prevail in any conflict between them and any terms in Supplier’s Purchase Order acknowledgment, confirmation, invoice, or other form or correspondence presented by Supplier, whether or not such additional or different terms would materially alter these Terms and Conditions. No change in the terms of this order, and no additional or different terms, shall be binding upon Buyer unless Buyer expresses such change or addition in writing and such change or addition has been signed by an authorized representative of Buyer. If an oral contract between Buyer and Supplier is established through performance and delivery of the Products, provisions and conditions of such oral contract shall be included to these Terms and Conditions, which shall prevail over any conflicting term, provision or condition. Provisions or conditions in a written agreement duly signed by both parties shall prevail over these Terms and Conditions.

3. CHANGES. Buyer may at any time make changes to the Purchase Order, including without limitation, method of shipment or packaging; time, place and manner of delivery; drawings; designs or specifications; quantities; instructions with respect to the rendition of Services; and/or canceling the Purchase Order or any part thereof. If any such change increases or decreases the cost or time required for the performance of the order, an equitable adjustment in the price and/or delivery schedule shall be made and set forth in a written modification to the Purchase Order. Any claim by Supplier for adjustment under this Paragraph must be made within thirty (30) days from the date of receipt of the written notification of the change and must be approved by Buyer in writing signed by an authorized representative of Buyer. Price increases shall not be binding on Buyer unless evidenced by a Purchase Order revision signed by Buyer.

4. DELIVERY. Delivery of Products shall not be deemed to be complete until such Products have been actually received and accepted by Buyer, notwithstanding delivery to any carrier. Delivery of Services shall not be deemed to be complete until such Services have been performed, received and accepted. Unless otherwise specified by Buyer, all shipments shall be F.O.B. destination point specified by Buyer. Supplier assumes responsibility for any loss or damage with respect to all Products furnished hereunder until such Products are delivered to and accepted by Buyer. Supplier shall be responsible for insuring all shipping of Products and shall also be responsible for making any and all claims with carriers resulting from delay, non-delivery, damage or loss to Products. Time is of the essence with respect to the delivery of the Products pursuant to the Purchase Order. In the event of non-performance by Supplier, Buyer may, at its option, purchase replacement products from another source at a price not in excess of the price stated in this Purchase Order, and Supplier agrees to promptly reimburse Buyer for any costs and expenses incurred under this Paragraph.

5. PACKING, SHIPPING AND CONTAINERS. The Products purchased hereunder must be suitably packed and prepared for shipment, and appropriately packed to comply with the carriers’ regulations and with any applicable transportation specifications of Buyer. No charges for packing, containers, storage or transportation shall be allowed unless specified on the face of the Purchase Order. A Packing List shall accompany each box or package shipment, showing the order number specified thereon as well as the item number and a description of the Products. Buyer shall not be obligated to accept any Products or Services unless Buyer issues a Purchase Order revision for a specific packing list.

6. INSPECTION. Payment for any Products and Services under these Terms and Conditions shall constitute acceptance thereof. The Products and Services purchased hereunder are subject to inspection at Buyer’s destination either before or after payment. Buyer reserves the right to reject or revoke acceptance of any Products and Services that do not conform in all respects with Buyer’s specifications or instructions, or with Supplier’s representations and warranties. Buyer’s inspection of the Products and Services shall be final and conclusive with respect to all shipments. Products and Services not accepted shall be returned to Supplier for full credit or replacement (at Buyer’s option) and at Supplier’s risk and expense, including transportation and handling charges both ways. Supplier shall not replace any rejected Products or Services unless approved by Buyer in writing.

7. PACKING, SHIPPING AND CONTAINERS. All shipments of Products shall be suitably packed and prepared for shipment, and appropriately packed to comply with the carriers’ regulations and with any applicable transportation specifications of Buyer. No charges for packing, containers, storage or transportation shall be allowed unless specified on the face of the Purchase Order. A Packing List shall accompany each box or package shipment, showing the order number specified thereon as well as the item number and a description of the Products. Buyer shall not be obligated to accept any Products or Services unless Buyer issues a Purchase Order revision for a specific packing list.

8. SUPPLIER’S WARRANTIES. Supplier represents and warrants that (a) all Products purchased pursuant hereto will be merchantable and free from defects in material and workmanship, (b) all Products purchased pursuant hereto will conform to the representations and warranties made in this Purchase Order or in any other written document or oral statement by Supplier, and shall be suitable for the purpose for which they are purchased by Buyer, (c) all Products purchased pursuant hereto will be free from defects arising out of or relating to (a) personal injury (including death), (b) products liability, (c) any damage or injury caused by or resulting from failure to conform to Purchaser’s instructions, specifications, or any other requirements, (d) any product liability resulting from the use by Buyer, or use or misuse of Products or Services, (e) any personal injury (including death), (f) any injury, loss, damage or property damage or alleged to be caused by the negligence or willful misconduct of Supplier, its employees, agents or subcontractors, (g) any breach of these Terms and Conditions by Supplier, (h) any infringement or alleged infringement of any patent, design, trademark, trade secret or other intellectual property right relating to the Products or Services including, but not limited to, any breach of Buyer’s confidentiality and intellectual property rights, (i) any breach of any confidentiality information and keep confidential by Supplier, its agents and employees. Supplier represents and warrants that it will prevent disclosure or use of any such information either directly or by incorporation of such information in manufacturing products for others. Supplier shall hold in confidence all information designated and maintained by Buyer as confidential, including without limitation designs, drawings, materials, processes, formulas, data, inventions, improvements, research or development test results, specifications, business plans, unpublished financial information, customer and supplier identities, marketing plans or strategies, or other information disclosed to Supplier whether in writing, electronically, verbally, by visiting Buyer’s premises, or otherwise) at any time in connection with the Products or Services provided under this Purchase Order. Supplier agrees to have an agreement with each of its employees or subcontractors who are providing Services to Buyer, and
shall disclose Buyer's trade secrets or other confidential information only to those employees or subcontractors who have a need to know the confidential information for the purpose of providing the ordered Products or Services. Supplier shall specifically inform those persons to whom it discloses Buyer's trade secrets or other confidential information of the confidential nature of the information and of their obligation to maintain such confidentiality. In the event of any breach or threatened breach of the obligations of this paragraph, Buyer shall be entitled to injunctive relief without proof of damage. Except as herein provided, Buyer's rights as set forth herein shall be in addition to Buyer's other rights in case of Supplier's default, whether set forth in this order or not. This Paragraph shall not apply to any inventions not created by Supplier or to any rights in copyrights or other intellectual property rights pertaining thereto. On request, Supplier shall, and shall cause its personnel and subcontractors to, execute all assignments, instruments of transfer, powers of attorney and other documents necessary to enforce Buyer's rights hereunder.

10. NO GRATUITIES. Supplier shall not offer or give any gratuities (whether in the form of entertainment, gifts or otherwise) to any officer or employee of Buyer with respect to the awarding, amending or making of any determination with respect to this Purchase Order.

11. CANCELLATION/TERMINATION. Buyer may cancel all or any portion of a Purchase Order or terminate Supplier's performance under any Purchase Order in whole or in part or upon written notice in the event Supplier fails to meet delivery times or is otherwise in breach of any of these Terms and Conditions. If this Purchase Order is so cancelled or terminated, Buyer may procure or otherwise obtain, upon such terms and in such manner as Buyer may deem appropriate, other Products or Services similar to those provided under the terminated Purchase Order. Supplier, subject to the exceptions set forth below and in addition to any other remedies allowed under law, shall be liable to Buyer for any excess costs of such similar Products or Services. Supplier shall transfer title and deliver to Buyer, in the manner and to the extent requested in writing by Buyer at or after termination such complete articles, partially completed articles and materials, parts, tools, dies, patterns, jigs, fixtures, plans, drawings, information and contract rights as Supplier has produced or acquired for the performance of the terminated part of this order; and Buyer shall pay Supplier the contract price for completed articles delivered to Buyer. Buyer may, at its option, either retain such articles in Buyer's possession or dispose of them in any manner Buyer sees fit. Buyer's retention of such articles shall not release Supplier of any of its obligations to provide all or any portion of the work or materials ordered under this Purchase Order.

12. INSURANCE. Supplier agrees to perform its obligations hereunder as an independent contractor and nothing contained herein shall be construed to create an employment or any other relationship between Supplier, its agents or employees, and Buyer. Supplier shall retain discretion and control with respect to the manner and means of performing Services hereunder. Supplier shall maintain coverage under commercial general liability insurance, including products liability, with limits of at least US$1,000,000 per occurrence and US$2,000,000 in the aggregate, and professional liability insurance, with limits of at least US$500,000 per occurrence for such Services. The above insurance shall be obtained from carriers licensed in the State of New York, and shall include contractual liability coverage with respect to this Purchase Order, broad form property damage/bodily injury and personal/advertising injury liability coverage with limits of at least US$1,000,000 per occurrence and in the aggregate, and fidelity bond insurance in an amount of at least US$1,000,000 per occurrence and in the aggregate. Buyer shall have the right to require a certificate of insurance as evidence of the required coverage. Each Commercial General Liability Insurance policy and certificates of insurance shall include Luxottica Group S.p.A., its subsidiaries, affiliates and divisions (including all entities comprising "Buyer" hereunder), as additional insureds, and shall provide that thirty (30) days' written notice must be given to Buyer before such policy is altered or cancelled.

13. INDEMNITATION. Supplier agrees to indemnify, defend and hold Buyer harmless from all losses, claims, demands, actions, judgments, suits, costs, and expenses (including reasonable attorney's fees and costs of investigation and defense) arising directly or indirectly out of or relating to the subject matter of the Purchase Order and these Terms and Conditions or any breach thereof by Supplier. Supplier shall be liable for the failure of any employees, agents, or third parties to maintain the confidentiality of such information. Information that, at the time of disclosure to Supplier, is in the public domain, or that, after disclosure to Supplier, becomes a part of the public domain through no action or fault of Supplier shall not be considered confidential information of Buyer. Upon Buyer's request, Supplier shall promptly disclose to Buyer all of Buyer's confidential information that Supplier has received from Buyer or that Buyer has otherwise made available to Supplier. Supplier shall cooperate with Buyer to prevent any unauthorized disclosure of Buyer's confidential information. Supplier shall use all reasonable efforts to keep Buyer's confidential information confidential. Supplier shall keep Buyer's confidential information in confidence, and shall not disclose such information to any other person unless Supplier is required to do so by law or is otherwise authorized to do so by written consent of Buyer. In addition, Supplier shall cooperate with Buyer in connection with any action or proceeding instituted by Buyer to enforce this Section 13. Supplier shall not be liable for any failure to maintain confidentiality if Supplier has used reasonable care in attempting to do so. If Supplier shall disclose Buyer's confidential information to any person other than as herein provided, Buyer's right in the Properties, or (e) take any action that would invalidate or be likely to invalidate Buyer's registrations. Supplier shall not under any circumstances sell or otherwise transfer any Products to Buyer, in the manner and to the extent requested in writing by Buyer at or after termination such complete articles, partially completed articles and materials, parts, tools, dies, patterns, jigs, fixtures, plans, drawings, information and contract rights as Supplier has produced or acquired for the performance of the terminated part of this order; and Buyer shall pay Supplier the contract price for completed articles delivered to accepted Buyer. Buyer shall have no obligations to Supplier in respect of the terminated part of this order.
communications, writings and agreements (whether oral or written) between the parties with respect to the subject matter hereof. No modification or amendment of the Purchase Order and these Terms and Conditions shall be effective unless in writing executed by Buyer and Supplier.

27. GOVERNMENT CONTRACTING

For purposes of this Section 27 of the Terms and Conditions, the term “Contractor” refers to Supplier and the term “subcontractor” refers to any of Supplier’s subcontractors.

If applicable, 41 CFR 60-306.5(a) and the following paragraphs apply to these Terms and Conditions:

This Contractor and subcontractor shall abide by the requirements of 41 CFR 60-741.5(a). This regulation prohibits discrimination against qualified protected veterans, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans.

If applicable, 41 CFR 60-741.5(a) and the following paragraph apply to these Terms and Conditions:

This Contractor and subcontractor shall abide by the requirements of 41 CFR 60-741.5(a). This regulation prohibits discrimination qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.


If applicable, the following clauses are incorporated herein by reference and shall predominate in the event of conflict with any other provision of the Purchase Order and these Terms and Conditions unless specifically noted. The referenced clauses are set forth or referred to in the Federal Acquisition Regulation (“FAR”) and Department of Defense FAR Supplement (“DFARS”). In order to make the context of these clauses applicable to the Purchase Order and these Terms and Conditions, the term “Contract” in all such clauses shall mean the Purchase Order and these Terms and Conditions, and the term “Contracting Officer” shall mean Buyer unless otherwise specified. The terms “Government” and “Contracting Officer” do not change (1) in the phrases “Government Property,” “Government-Owned Property,” “Government Equipment,” “Government-Furnished Property,” and “Government-Owned Equipment”; (2) when a right, act, authorization, or obligation can be granted or performed only by the Government or the Prime Contract Contracting Officer or his duly authorized representative; (3) when access to proprietary financial information or other proprietary data is required; (4) when title to property is to be transferred directly to the Government; (5) where specifically modified as noted below; and (6) in DFARS 252.227-7015.


Notwithstanding the specifically enumerated clauses and any other agreement to the contrary between the parties, Buyer reserves the right to require Supplier to comply with any additional obligations related to or arising from Buyer’s current or future obligations with governmental entities.

**FAR Clauses:** The following provisions of the FAR are incorporated by reference as if set forth in full and shall apply to Supplier to the extent applicable:

a) 52.203-13 Contractor Code of Business Ethics and Conduct (Apr 2010) (Pub. L. 110-252, Title VI, Chapter 1 (41 U.S.C. 251 note)). In altering this clause to identify the appropriate parties, all disclosures of violation of the civil False Claims Act or of Federal criminal law shall be directed to the agency Office of the Inspector General, with a copy to the Contracting Officer.


c) 52.219-4 Utilization of Small Business Concerns (Dec 2010) (15 U.S.C. 637(d)(2) and (3)), if the Purchase Order offers further subcontracting opportunities. If the Purchase Order (except Purchase Orders to small business concerns) exceeds $650,000 ($1.5 million for construction of any public facility), the Supplier must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

d) 52.222-17 Nondisplacement of Qualified Workers (Jan 2013) (E.O. 13495). Flow down required in accordance with paragraph (I) of FAR clause 52.222-17.

e) 52.222-36 Equal Opportunity (Mar 2007) (E.O. 13146).

f) 52.222-35 Equal Opportunity for Veterans (Sep 2010) (38 U.S.C. 4212(a)).

g) 52.222-40 Notification of Employee Rights Under the National Labor Relations Act (Dec 2010) (E.O. 13496), if flow down is required in accordance with paragraph (f) of FAR clause 52.222-40.


i) 52.222-50 Combating Trafficking in Persons (Feb 2009) (22 U.S.C. 7104(g)).


l) 52.222-54 Employment Eligibility Verification (Aug 2013).


o) 52.226-6 Promoting Excess Food Donation to Nonprofit Organizations (Mar 2009) (Pub. L. 110-247). Flow down required in accordance with paragraph (e) of FAR clause 52.226-6.

p) 52.244-6 Subcontracts for Commercial Items (Dec 2013).

q) 52.246-2 Inspection of Supplies – Fixed-Price (Aug 1996).

r) 52.247-64 Preference for Privately-Owned U.S.-Flag Commercial Vessels (Feb 2006) (46 U.S.C. App. 1241 and 10 U.S.C. 2631), if flow down is required in accordance with paragraph (d) of FAR clause 52.247-64.

**DFARS Clauses:** The following provisions of the DFARS are incorporated by reference as if set forth in full and shall apply to Supplier to the extent applicable:


c) 252.227-7015 Technical Data—Commercial Items (SEP 2011), if applicable (see 227.7102-4(a)).

d) 252.227-7037 Validation of Restrictive Markings on Technical Data (SEP 2011), if applicable (see 227.7102-4(c)).


f) 252.246-7003 Notification of Potential Safety Issues (JAN 2007).


Luxottica Terms & Conditions

Revised 2/14