

# TERMS & CONDITIONS OF SALE

**SECOOP**

## **Secop Group Companies' General Terms and Conditions for the Sale of Products and Services**

### **1. Applicability and Definitions**

1.1 The accompanying quotation, proposal, confirmation of sale or invoice (the "Sales Confirmation") together with these terms and conditions of sale (these "Terms", and together with the Sales Confirmation, the "Agreement") are the only terms which govern the sale of the goods ("Products") and Services ("Services") by the Secop Group Company named on the Sales Confirmation ("Secop") to the buyer named on the Sales Confirmation ("Buyer").

1.2 "Secop Group Company" means Secop GmbH, Secop Inc. or other an entity directly or indirectly controlled by Secop Group Holding GmbH whether by shares or voting rights as well as any sister company of Secop Group Holding GmbH. Notwithstanding anything herein to the contrary, if a written contract signed by both parties is in existence covering the sale of the Products and Services covered hereby, the terms and conditions of said contract shall prevail to the extent they are irreconcilably different with these Terms.

1.3 This Agreement shall comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. In the event of irreconcilably conflicting terms between the quotation, proposal, confirmation of sale or invoice for the same order, the confirmation of sale shall prevail and shall be considered the Sales Confirmation for purposes contained herein. This Agreement shall prevail over any of Buyer's general terms and conditions of purchase regardless whether or when Buyer has submitted its purchase order or such terms. Fulfillment of Buyer's order does not constitute acceptance of any of Buyer's terms and conditions and does not serve to modify or amend these Terms or the Agreement. Secop rejects any additional or inconsistent terms or conditions offered by Buyer at any time, whether or not such terms or conditions materially alter this Agreement and irrespective of Buyer's acceptance of, or payment for, Secop's Products or Secop's issuance of a Sales Confirmation.

1.4 Buyer will be deemed to have accepted this Agreement if Buyer (a) issues a purchase order in response to the Sales Confirmation, (b) signs the accompanying Sales Confirmation, or otherwise provides any indication of acceptance thereto, (c) accepts delivery of any Products or Services, or (d) makes any other indication of acceptance or agreement (including failure to promptly reject these Terms). Secop may cancel any and all Sales Confirmations and orders for Products and Services prior to delivery, upon written notice to Buyer.

1.5 Buyer may not make changes to the Sales Confirmation, or any part of the order, including postponement or cancellation thereof, without Secop's prior written approval. Buyer may request a change order by submitting a request to Secop in writing. Secop's approval to any change order shall be in Secop's sole discretion. Upon Secop's written approval of a change order, such change order shall modify the Sales Confirmation in accordance with the terms therewith. Secop reserves the right to ask the Buyer to reimburse the costs incurred as a result of such change order or any cancellation or termination of the order.

1.6 Notwithstanding anything to the contrary contained in this Agreement, Secop may, from time to time change the Services without the consent of Buyer provided that such changes do not materially affect the nature or scope of the Services, or the fees or any performance dates set forth in the Sales Confirmation.

## **2. Delivery of Products and Performance of Services.**

2.1 The Products will be delivered within a reasonable time after the receipt of Buyer's purchase order. Secop shall not be liable for any delays, loss, or damage in transit.

2.2 Unless otherwise agreed to in a signed writing by the parties, Secop shall deliver the Products to Buyer in Secop's facility listed in the Sales Confirmation (the "Delivery Point"), using Secop's standard methods for packaging such Products, and Buyer shall take delivery of the Products within one (1) business day of Secop's written notice that the Products have been delivered to the Delivery Point. Buyer shall be responsible for all loading costs and provide equipment and labor reasonably suited for receipt of the Products at the Delivery Point, and will unload and release all transportation equipment promptly so Secop incurs no demurrage or other expense.

2.3 Unless otherwise provided in the Sales Confirmation, delivery of the Products shall be made EXW the Delivery Point (Incoterms® 2020).

2.4 Secop may, in its sole discretion, without liability or penalty, make partial shipments of Products to Buyer. Each shipment will constitute a separate sale, and Buyer shall pay for the units shipped whether such shipment is in whole or partial fulfillment of Buyer's purchase order.

2.5 If for any reason Buyer fails to accept delivery of any of the Products on the date fixed pursuant to Secop's notice that the Products have been delivered at the Delivery Point, or if Secop is unable to deliver the Products at the Delivery Point on such date because Buyer has not provided appropriate instructions, documents, licenses or authorizations: (a) risk of loss to the Products shall pass to Buyer; (b) the Products shall be deemed to have been delivered; and (c) Secop, at its option, may store the Products until Buyer picks them up, provided that Buyer shall be liable for any and all related costs and expenses (including, without limitation, storage and insurance).

2.6 Secop shall use reasonable efforts to meet any performance dates to render the Services specified in the Sales Confirmation, provided, however, that any such performance dates are understood to only be estimates.

2.7 With respect to the Services, Buyer shall (a) cooperate with Secop in all matters relating to the Services and provide such access to Buyer's premises, and such office accommodation and other facilities as may reasonably be requested by Secop, for the purposes of performing the Services; (b) respond promptly to any Secop request to provide direction, information, approvals, authorizations, or decisions that are reasonably necessary for Secop to perform Services in accordance with the requirements of this Agreement; (c) provide such customer materials or information as Secop may reasonably request to carry out the Services in a timely manner and ensure that such customer materials or information are complete and accurate in all material respects; and (d) obtain and maintain all necessary licenses and consents and comply with all applicable laws in relation to the Services before the date on which the Services are to start.

2.8 Secop has a specific set of General Terms and Conditions for medical products and applications. For more information, please consult your Secop contact who will be more than happy to assist you.

### **3. Non-Delivery.**

3.1 The quantity of any installment of Products as recorded by Secop on dispatch from Secop's place of business is conclusive evidence of the quantity received by Buyer on delivery unless Buyer can provide conclusive evidence proving the contrary.

3.2 Secop shall not be liable for any non-delivery of Products (even if caused by Secop's negligence) unless Buyer gives written notice to Secop of the non-delivery within three (3) days of the date when the Products would in the ordinary course of events have been received.

3.3 Any liability of Secop for non-delivery of the Products shall be limited to replacing the Products within a reasonable time or adjusting the invoice respecting such Products to reflect the actual quantity delivered.

3.4 Buyer acknowledges and agrees that the remedies set forth in this Section 3 are Buyer's exclusive remedies for any non-delivery of Products.

### **4. Quantity.**

If Secop delivers to Buyer a quantity of Products of up to 5% more or less than the quantity set forth in the Sales Confirmation, Buyer shall not be entitled to object to or reject the Products or any portion of them by reason of the surplus or shortfall and shall pay for such Products the price set forth in the Sales Confirmation adjusted pro rata.

### **5. Title and Risk of Loss.**

Except as provided in Section 2.5 above, title and risk of loss passes to Buyer upon delivery of the Products at the Delivery Point. As collateral security for the payment of the purchase price of the Products, Buyer hereby grants to Secop a lien on and security interest in and to all of the right, title, and interest of Buyer in, to and under the Products, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest in accordance with applicable law.

### **6. Buyer's Acts or Omissions.**

If Secop's performance of its obligations under this Agreement is prevented or delayed by any act or omission of Buyer or its agents, subcontractors, consultants, or employees, Secop shall not be deemed in breach of its obligations under this Agreement or otherwise liable for any costs, charges, or losses sustained or incurred by Buyer, in each case, to the extent arising directly or indirectly from such prevention or delay.

### **7. Specifications.**

Subject to Section 8 and Section 11 below, the Products shall conform to the specifications set forth in the Sales Confirmation or, if no specifications are listed therein, Secop's customary specifications in effect as of the date of manufacture (the "Specifications"). Except as otherwise provided in this Section 7, Secop may modify the Specifications at any time without prior written notice to Buyer, provided that Secop shall update the Sales Confirmation in the event the Prices are adjusted as a result thereof. In the event the Specifications are Buyer's specifications, Buyer's design, or otherwise result from Buyer's request to customize, adjust or otherwise modify Secop's specifications, regardless of whether such Specifications were designed or modified by Secop or any third party (collectively, "Buyer's Specifications"), Secop may modify such Buyer's Specifications provided that Secop shall notify Buyer thereof and, in the event the Prices are adjusted as a result thereof, shall update the Sales Confirmation.

## **8. Inspection and Rejection of Nonconforming Products.**

8.1 Buyer shall inspect the Products within one (1) business day of receipt ("Inspection Period"). Buyer will be deemed to have accepted the Products unless it notifies Secop in writing of any Nonconforming Products during the Inspection Period and furnishes such written evidence or other documentation as reasonably required by Secop. "Nonconforming Products" means only the following: (a) the Product shipped is different than identified in the Sales Confirmation; (b) the Product's label or packaging incorrectly identifies its contents, or (c) the Products delivered do not conform to the Specifications.

8.2 If Buyer timely notifies Secop of any Nonconforming Products, Secop shall, in its sole discretion, (a) replace such Nonconforming Products with conforming Products, or (b) credit or refund the Price for such Nonconforming Products, together with any reasonable shipping and handling expenses incurred by Buyer in connection therewith. Buyer shall ship, at its expense and risk of loss, the Nonconforming Products to Secop's facility as notified by Secop to Buyer in writing. If Secop exercises its option to replace Nonconforming Products, Secop shall, after receiving Buyer's shipment of Nonconforming Products, ship to Buyer, at Buyer's expense and risk of loss, the replaced Products to the Delivery Point.

8.3 Buyer acknowledges and agrees that the remedies set forth in this Section 8 are Buyer's exclusive remedies for the delivery of Nonconforming Products or Products that Buyer ought to have identified that the Products delivered were Nonconforming Products during the Inspection Period. Except as provided under Section 8.2 above, all sales of Products to Buyer are made on a one-way basis and Buyer has no right to return Products purchased under this Agreement to Secop.

## **9. Price.**

9.1 Buyer shall purchase the Products and Services from Secop at the prices (the "Prices") set forth in Secop's Sales Confirmation. In the event the Sales Confirmation is silent regarding the Prices, the applicable Prices shall be as forth in Secop's published price list in force the date of the Sales Confirmation; provided that, if the Prices were to be increased by Secop before delivery of the Products to a carrier for shipment to Buyer, including as a result of raw material or other supply-chain cost increases to Secop, then the Prices shall be such increased Prices and Buyer shall be billed by Secop on the basis of such increased Prices.

9.2 Buyer agrees to reimburse Secop for all reasonable travel and out-of-pocket expenses incurred by Secop in connection with the performance of the Services.

9.3 All Prices are exclusive of all sales, use, value added and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any Governmental Authority on any amounts payable by Buyer. Buyer shall be responsible for all such charges, costs and taxes; provided, that, Buyer shall not be responsible for any taxes imposed on, or with respect to, Secop's income, revenues, gross receipts, personal or real property, or other assets.

## **10. Payment Terms.**

10.1 Unless otherwise agreed to in a signed writing by the parties, Buyer shall pay all invoiced amounts due to Secop within thirty (30) days from the date of Secop's invoice. Unless otherwise stated in the Sales Confirmation, Buyer shall make all payments hereunder by wire transfer and, (a) if Secop is Secop Inc., in US dollars, and (b) if Secop is any Secop Group Company other than Secop Inc., in Euro.

10.2 Buyer shall pay interest on all late payments at the lesser of the rate of 5% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Buyer shall reimburse Secop for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees. In addition to all other remedies available under these Terms or at law (which Secop does not waive by the exercise of any rights hereunder), Secop shall be entitled to suspend the delivery of any or all Products or performance of any Services and stop Products in transit if Buyer fails to pay any amounts when due hereunder.

10.3 Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Secop, whether relating to Secop's breach, bankruptcy or otherwise.

## **11. Limited Warranty.**

11.1 Unless a different warranty period is provided in the Sales Confirmation, Secop warrants to Buyer that for a period of twelve (12) months ("Warranty Period") from the date of shipment of the Products, that such Products will materially conform to the Specifications.

11.2 Except for the warranties set forth in section 11.1, Secop makes no warranty whatsoever with respect to the Products or Services, including any (a) warranty of merchantability; (b) warranty of fitness for a particular purpose; (c) warranty of title; or (d) warranty against infringement of intellectual property rights of a third party; whether express or implied by law, course of dealing, course of performance, usage of trade, or otherwise.

11.3 Products manufactured by a third party ("Third Party Product") may constitute, contain, be contained in, incorporated into, attached to or packaged together with, the Products. Third Party Products are not covered by the warranty provided in Section 11.1. For the avoidance of doubt, Secop makes no representations or warranties with respect to any Third Party Product, including any (a) warranty of merchantability; (b) warranty of fitness for a particular purpose; (c) warranty of title; or (d) warranty against infringement of intellectual property rights of a third party; whether express or implied by law, course of dealing, course of performance, usage of trade, or otherwise.

11.4 Secop shall not be liable for a breach of the warranties set forth in Section 11.1 unless: (a) Buyer gives written notice of the defective Products or Services, as the case may be, reasonably described in writing, to Secop within five (5) business days of the time when Buyer discovers or ought to have discovered the defect; (b) if applicable, Secop is given a reasonable opportunity after receiving the notice of breach of the warranty set forth in Section 11.1 to examine such Products and Buyer (if requested to do so by Secop) returns such Products to Secop's place of business at Buyer's expense for the examination to take place there; and (c) Secop reasonably verifies Buyer's claim that the Products or Services are defective.

11.5 Secop shall not be liable for a breach of the warranty set forth in Section 11.1 if: (a) Buyer makes any further use of such Products after giving such notice; (b) the defect arises because Buyer failed to follow Secop's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Products; or (c) Buyer alters or repairs such Products without the prior written consent of Secop.

11.6 Subject to Section 11.3 and Section 11.5 above, with respect to any such Products during the Warranty Period, Secop shall, in its sole discretion, either: (i) repair or replace such Products (or the defective part) or (ii) credit or refund the price of such Products at the pro rata contract rate provided that, if Secop so requests, Buyer shall, at Buyer's expense, return such Products to Secop.

11.7 The remedies set forth in section 11.6 Shall be the buyer's sole and exclusive remedy and Secop's entire liability for any breach of the limited warranties set forth in sections 11.1 and 11.3.

## **12. Limitation of Liability.**

12.1 In no event shall Secop be liable to buyer or any third party for any loss of use, revenue or profit or loss of data or diminution in value, or for any consequential, indirect, incidental, special, exemplary, or punitive damages whether arising out of breach of contract, tort (including negligence), or otherwise, regardless of whether such damages were foreseeable and whether or not Secop has been advised of the possibility of such damages, and notwithstanding the failure of any agreed or other remedy of its essential purpose.

12.2 In no event shall Secop's aggregate liability arising out of or related to this agreement, whether arising out of or related to breach of contract, tort (including negligence), or otherwise, exceed the total of the amounts paid to Secop for the Products and Services sold hereunder during the twelve month period preceding the claim.

## **13. Indemnification.**

Buyer shall defend, indemnify and hold Secop harmless from any and all claims, demands, subrogation claims by Buyer's insurers, causes of action, controversy, liabilities, damages, fines, regulatory actions (including Product recalls, withdrawal or regulatory requirements regarding the Product), seizures of Product, losses, costs, expenses (including, but not limited to investigations, recall and withdrawal expenses, attorneys' fees, expert witness expenses and litigation expenses) (hereinafter "Claim"), arising from or in connection with any Claim asserted against Secop for any damage, environmental liability, patent or intellectual property infringement caused by (a) Buyer's Specifications; (b) the unintended use, modification or alteration of the Products or their use contrary to Secop's instructions; (c) Buyer's fault, negligence, or breach of this Agreement; (d) any injury, death, loss, property damage, delay or failure in delivery of Secop's Products caused by Buyer; or (e) any other Claim, whether in tort, contract, or otherwise, relating to this Agreement, the business relationship between the parties, the Products or the Services, resulting from or caused by Buyer, in whole or part.

## **14. Insurance.**

During the term of this Agreement and for a period of two (2) years thereafter, Buyer shall, at its own expense, maintain and carry insurance in full force and effect which includes, but is not limited to, commercial general liability (including Product liability) in a sum no less than \$5,000,000 with financially sound and reputable insurers. Upon Secop's request, Buyer shall provide Secop with a certificate of insurance from Buyer's insurer evidencing the insurance coverage specified in these Terms. Upon Secop's request, Buyer shall ensure the certificate of insurance shall name Secop as an additional insured. Buyer shall provide Secop with thirty (30) days' advance written notice in the event of a cancellation or material change in Buyer's insurance policy. Except where prohibited by law, Buyer shall require its insurer to waive all rights of subrogation against Secop's insurers and Secop.

## **15. Compliance with Law.**

Buyer shall comply with all applicable laws, regulations, and ordinances. Buyer shall maintain in effect all the licenses, permissions, authorizations, consents, and permits that it needs to carry out its obligations under this Agreement. Buyer shall comply with all export and import laws of all countries involved in the sale of the Products under this Agreement or any resale of the Products by Buyer. Buyer assumes all responsibility for shipments of Products requiring any government import clearance. Secop may terminate this Agreement if any governmental authority imposes antidumping or countervailing duties or any other duties or penalties on the Products.

**16. Termination.**

In addition to any remedies that may be provided under these Terms, Secop may terminate this Agreement with immediate effect upon written notice to Buyer, if Buyer: (a) fails to pay any amount when due under this Agreement; (b) has not otherwise performed or complied with any of these Terms, in whole or in part; or (c) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization, or assignment for the benefit of creditors.

**17. Waiver.**

No waiver by Secop of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Secop. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

**18. Confidential Information.**

All non-public, confidential or proprietary information of Secop, including but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts, or rebates, disclosed by Secop to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated, or otherwise identified as "confidential" in connection with this Agreement is confidential, solely for the use of performing this Agreement and may not be disclosed or copied unless authorized in advance by Secop in writing. Upon Secop's request and at Secop's option, Buyer shall (i) promptly return all documents and other materials received from Secop or other Secop confidential information, including electronic data, or (ii) destroy all such documents, materials and confidential information, including electronic data, and certify in writing to Secop that such documents, materials and confidential information has been destroyed. Secop shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the public domain; (b) known to Buyer at the time of disclosure; or (c) rightfully obtained by Buyer on a non-confidential basis from a third party.

**19. Force Majeure.**

Secop shall not be liable or responsible to Buyer, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Secop (in Secop's reasonable discretion) and the effects of these acts or circumstances including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions or orders, war, invasion, or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, pandemic, lockouts, strikes or other labor disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage.

**20. Assignment.**

Buyer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Secop. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Buyer of any of its obligations under this Agreement.

## **21. Relationship of the Parties.**

The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

## **22. No Third-Party Beneficiaries.**

This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of these Terms.

## **23. Governing Law.**

23.1 If Secop is any other Secop Group Company other than Secop Inc., all matters arising out of or relating to this Agreement are governed by and construed in accordance with German law, without giving effect to any choice or conflict of law provision or rule that would cause the application of the laws of any jurisdiction other than German Law.

23.2 If Secop is Secop Inc., all matters arising out of or relating to this Agreement are governed by and construed in accordance with the internal laws of the State of Illinois without giving effect to any choice or conflict of law provision or rule (whether of the State of Illinois or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of Illinois.

23.3 The United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply.

## **24. Arbitrations.**

24.1 All disputes arising out of or in connection with this Agreement shall be settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with said Rules. The arbitral award shall be final and binding upon the parties. The parties may refer the enforcement of any arbitral award to any competent court. English shall be the language to be used in the arbitration proceedings unless otherwise agreed between the parties. The arbitration proceedings and the arbitral award shall be confidential and the involved persons on both sides shall be pledged to secrecy.

24.2 If Secop is Secop Inc., the seat of arbitration shall be in Chicago, Illinois (USA). If Secop is any other Secop Group Company other than Secop Inc., the seat of arbitration shall be Hamburg, Germany.

24.3 This Section 24 is without prejudice to Secop's right to seek interim, injunctive or provisional relief against Buyer through competent courts to protect its rights and interests, or to enforce Buyer's obligations hereunder, and Buyer irrevocably agrees and submits to the jurisdiction of such courts to hear and determine any proceedings for interim, injunctive or provisional relief relating to or arising out of this Agreement.



**25. Notices.**

All notices, requests, consents, claims, demands, waivers, and other communications hereunder shall be in writing and addressed to the parties at the addresses set forth on the face of the Sales Confirmation or to such other address that may be designated by the receiving party in writing. All notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission), or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the notice has complied with the requirements of this Section.

**26. Severability.**

If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

**27. Survival.**

Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Agreement including, but not limited to, the following provisions: Insurance, Compliance with Laws, Confidential Information, Governing Law, Arbitration and Survival.

**28. Amendment and Modification.**

These Terms may only be amended or modified in a writing stating specifically that it amends these Terms and is signed by an authorized representative of each party.