

TERMS AND CONDITIONS OF SALE AND DELIVERY OF BROCACEF SUPPLIES & SERVICES B.V.

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1 Definitions

- 1.1 In these terms and conditions:
Brocacef: means the private limited liability company Brocacef Supplies & Services B.V.
Other Party: means the party receiving an offer of Brocacef or placing an order with Brocacef or entering into an agreement with Brocacef.

2 Terms and Conditions

- 2.1 These terms and conditions apply to all offers, agreements and deliveries of Brocacef. Brocacef explicitly dismisses applicability of the terms and conditions of the other party.
- 2.2 These terms and conditions also apply to the services to be provided by Brocacef related to the sale and delivery of products, contracting work or advice to be rendered.
- 2.3 Changes in or additions to the agreement and these terms and conditions will take effect only if explicitly accepted in writing by Brocacef.
- 2.4 Any services or products provided by Brocacef and the other party before conclusion of the agreement are deemed to have been provided subject to applicability of these terms and conditions.
- 2.5 If any provision of these terms and conditions is wholly or partially invalid, unlawful, non-binding or unenforceable, the remaining provisions will not be affected.
- 2.6 Brocacef's failure to invoke the rights arising from these terms and conditions, at any time or for whatever reason, may not be regarded as a waiver of its rights.
- 2.7 The other party may not transfer agreements, rights and obligations between Brocacef and the other party or claims of the other party against Brocacef without the prior written consent of Brocacef.
- 2.8 All amounts stated in these terms and conditions are exclusive of turnover tax ('BTW') and other government-imposed levies.

3 Offers and Price

- 3.1 All offers and price lists are without obligation, unless explicitly agreed otherwise in writing. Previous offers will be revoked by a new offer.
- 3.2 Brocacef reserves the right to adjust prices if after the date of conclusion of the agreement one or several of the cost factors rise, even if such rise is due to foreseeable circumstances.
- 3.3 The images, drawings, descriptions and explanations included by Brocacef in brochures, price lists, information leaflets, presentations and any other publication are merely indicative. No rights may be derived from such information.

4 Delivery

- 4.1 In the Netherlands products are delivered carriage paid to delivery address of the other

party. Brocacef reserves the right to determine the mode of transport and packaging, unless explicitly agreed otherwise in writing. Delivery will always be made on working days.

- 4.2 Terms of delivery stated by Brocacef are merely indicative unless a final delivery term has been explicitly agreed in writing.
- 4.3 In the execution of the agreement by Brocacef the other party will do anything reasonably required to allow for timely delivery by Brocacef.
- 4.4 In the event of non-compliance by the other party with the provisions of Article 4.3 any final delivery term agreed will no longer be binding and the other party will be in default without any further notice of default being required. Without prejudice to its rights under the agreement and the law Brocacef will then have the right to suspend performance of the agreement until the other party has remedied such default.
- 4.5 If the other party requests Brocacef explicitly to reserve the products in its warehouse such products will be deemed to have been delivered at the time of reservation by the other party. From that point on the costs of storage will be paid by the other party.
- 4.6 Brocacef has the right to execute orders or contracts in full or in part. Part deliveries may be separately invoiced to the other party.
- 4.7 In case of reasonable doubt about the other party's payment capacity Brocacef has the right to suspend its delivery (deliveries) without prejudice to its right to termination or dissolution of the agreement pursuant to Article 8 until the other party has provided security for payment. The other party will be liable for the loss and damage sustained by Brocacef due to delayed delivery.
- 4.8 If the other party requests Brocacef to execute a special delivery or contract for packaging materials or products imprinted with a name, the other party will accept a 10% deviation from the volume ordered.

5 Risk

- 5.1 The other party will bear the full risk for the products upon delivery.

6 Terms of Payment

- 6.1 The other party must pay the amounts due under the agreement within thirty (30) days of invoice.
- 6.2 All invoices drawn up by or for the account of Brocacef will be regarded as accepted by the other party save in the event of protest by the other party by registered letter with acknowledgment of receipt within eight (8) days from the invoice date. Protest will never suspend the other party's payment obligation.

- 6.3 The other party will be in default without any further notice of default being required if payment has not been made within the term set in Article 6.1.
- 6.4 After occurrence of the default the other party will owe interest at the statutory rate for commercial transactions on the amount due as referred to in Section 6:119a paragraph 1 Dutch Civil Code. The other party must also pay all judicial and extrajudicial costs of collection of the amount due. The extrajudicial costs are assessed at 15% minimum of the amount due with a minimum of EUR 400.
- 6.5 Brocacef will always have the right to set off any amounts due to the other party against the amounts payable by the other party to Brocacef. The other party waives any right to set-off of amounts due by either party.
- 6.6 Any payment by the other party will be applied first towards payment of the interest due and then towards payment of the costs of collection. Only after those amounts have been paid will payment by the other party be offset against the principal sum due.
- 6.7 In the event of late payment Brocacef will have the right to suspend performance of all agreements and orders of the other party until payment in full of the amount due, without prejudice to Brocacef's right to terminate or dissolve the agreement pursuant to Article 8.
- 6.8 In the event of doubts about the other party's creditworthiness Brocacef will have the right to demand that the other party provides security or pays deliveries in advance without prejudice to Brocacef's other rights.
- 7 Retention of Title**
- 7.1 Brocacef retains right of ownership of the products delivered now and in the future until all current and future claims against the other party on whatever account have been paid in full. The other party waives in advance any rights of retention regarding products already delivered and yet to be delivered by Brocacef and will not levy (or cause others to levy) attachment on those products.
- 7.2 Brocacef's retention of title will not lapse if Brocacef transfers its claims against the other party or if those claims are paid by a third party.
- 7.3 The other party may not encumber the products already delivered or yet to be delivered by Brocacef or establish limited rights on those products. The other party is required to notify Brocacef immediately of third-party actions regarding the products owned by Brocacef.
- 7.4 In the ordinary course of business the other party may sell products already delivered and yet to be delivered by Brocacef on the understanding that until the other party has paid the products Brocacef will be subrogated to the other party's rights towards its buyer.
- 7.5 The other party does not have the right to assign or pledge the claims against its buyers due to the sale of products delivered or yet to be delivered by Brocacef without the prior written consent of Brocacef. The other party undertakes to pledge said claims against Brocacef in the sense of Section 3:239 Dutch Civil Code at Brocacef's request.
- 7.6 Brocacef has the right to repossess the products already delivered and yet to be delivered without any notice of demand, notice of default or judicial intervention being required if:
- The other party has failed to comply with any obligation on whatever account, or;
 - Brocacef has valid reasons to fear that the other party will fail to comply with its obligations as referred to above.
- 7.7 The other party will fully cooperate with Brocacef to enable Brocacef to exercise the right of retention contained in Article 7.1. The other party hereby grants Brocacef unconditional and irrevocable consent to (cause others to) access all sites where Brocacef's products are located and to repossess those products in all events in which Brocacef wishes to exercise its retention of title.
- 7.8 The other party is required to take all measures necessary to individualise the products delivered and to take all precautions to make Brocacef's right of ownership known in the event of attachment or recovery by third parties.
- 8 Termination and Dissolution of Agreement**
- 8.1 Brocacef has the right to terminate or dissolve the agreement in whole or in part without any judicial intervention being required if:
- The other party fails to comply with any of its payment obligations under an agreement between Brocacef and the other party;
 - The other party has failed to comply with any obligation other than a payment obligation and – insofar as performance is not permanently or temporarily impossible – has still not complied with such obligation within five (5) days of a notice of default by Brocacef. For the purpose of this paragraph notice of default will be understood to mean any notice demanding performance;
 - The other party has been declared bankrupt, has been granted (informal) suspension of payments, whether or not provisionally, the Debt Management (Natural Persons) Act has become applicable to the other party, the other party has otherwise lost control or free disposal of its assets or parts thereof, or if the other party has entered into a composition with its creditors or has taken steps to reschedule its debts or if the other party has discontinued or wound up its business;
 - Brocacef has valid reasons to fear that the other party will fail to comply with any obligation under the agreement(s) made with Brocacef, including any obligation under these terms and conditions or that Brocacef's possibilities of recovery will be prejudiced.
- 8.2 The other party is required to immediately notify Brocacef if a ground for termination or

- dissolution of the agreement as referred to in Article 8.1 occurs.
- 8.3 In the event of termination or dissolution of the agreement as referred to in Article 8.1 the other party will be required to pay the loss and damage sustained by Brocacef.
- 9 **Force Majeure**
- 9.1 In the event of force majeure Brocacef will have the right to suspend execution of the agreement, to terminate or dissolve the agreement in full or in part without the other party being entitled to any compensation on that account.
- 9.2 In these terms and conditions 'force majeure' means any circumstance beyond the will of Brocacef – even if foreseeable at the time of conclusion of the agreement – that will prevent performance of the agreement permanently or temporarily, including: restrictive government measures of whatever nature, fires, epidemics, mobilisation, war, revolution, strikes, disturbances, seizure, interruption of production, shortage of or defects in raw materials, semi-finished products and auxiliary materials and/or energy, acts of God, traffic congestion and full or partial default by suppliers.
- 10 **Obligation to Complain**
- 10.1 The other party is required to examine immediately upon receipt whether the products delivered comply with the agreement.
- 10.2 The other party may not invoke non-compliance by the products delivered with the agreement if the other party did not within fourteen (14) days of receipt file a written complaint with Brocacef.
- 10.3 The products delivered will at any rate be considered satisfactory if taken into use or delivered to third parties by the other party.
- 10.4 Complaints will not entitle the other party to refuse a delivery in full or in part or to suspend its payment obligations.
- 10.5 The other party will enable Brocacef to (cause others to) investigate complaints and will fully cooperate in such investigation. If the other party does not or not fully cooperate or investigation is or has become impossible for other reasons, any claim of the other party against Brocacef will lapse.
- 10.6 If a complaint filed by the other party is valid and if no force majeure applies as defined in Article 9.2 Brocacef will, at its option, supplement, replace or repair the products concerned or grant the other party a discount. The other party will not be entitled to any additional compensation.
- 11 **Liability**
- 11.1 With respect to products delivered by Brocacef originating from third parties, Brocacef cannot be held liable for compensation of loss or damage, unless such loss or damage is the result of wilful intent or gross negligence on the part of Brocacef. Furthermore, Brocacef cannot be held liable for compensation of loss or damage – of whatever nature – unless such loss or damage is the result of wilful intent or gross negligence on the part of Brocacef.
- 11.2 Brocacef's liability will never exceed the amount covered under the liability insurance taken out by Brocacef.
- 11.3 If and to the extent that Brocacef cannot file a claim under its liability insurance any liability of Brocacef will be limited to the invoice value, up to EUR 10,000 maximum.
- 11.4 The other party will be required to compensate the loss and damage sustained by Brocacef due to non-compliance by the other party with the agreement(s) made with Brocacef or unlawful actions or failures attributable to the other party or to the employees or third parties engaged by the third party.
- 11.5 The other party is required to fully indemnify Brocacef against third-party claims related to the products delivered or yet to be delivered by Brocacef to the other party or services provided or to be provided. The other party is required also to pay any costs incurred by Brocacef in raising a defence against such third-party claims.
- 11.6 Brocacef may require the other party to take off the market any products purchased from Brocacef and placed on the market that are defective or that might manifest defects (so-called recall). The other party will pay any costs arising from the above for the other party unless such defect is the result of an attributable failure by Brocacef in the performance of the agreement.
- 12 **Returns**
- 12.1 The other party may not return the products delivered by Brocacef unless:
- Brocacef has granted explicit consent;
 - The manufacturer or importer applies a compensation scheme for (almost) expired products that applies to Brocacef as well as the other party.
- The compensation scheme to which this paragraph b refers will never apply to products ordered specifically for the other party and sterilised medical aids.
- 12.2 Before returning products the other party must notify Brocacef.
- 12.3 Brocacef will neither destroy nor credit any products wrongly returned, but return the same to the other party. The costs of return will be paid by the other party.
- 13 **Packaging**
- 13.1 Packaging, including at any rate plastic containers, pallets and crates, will remain Brocacef's property. The amounts charged to the other party for such packaging are like a deposit. If the packaging returned is in good condition and still feature the trademarks, labels and notices affixed by Brocacef, Brocacef will refund the other party the amounts charged, possibly minus compensation for tear and wear.

13.2 If the other party does not return the packaging within six (6) months of delivery, a rental fee will be charged.

14 **Intellectual Property Rights**

14.1 The other party undertakes to respect and not to infringe in any manner whatsoever the intellectual property rights in the products delivered and any accompanying documents,

14.2 Brocacef will grant the other party a licence to use the products manufactured by Brocacef by order of the other party in accordance with the purpose agreed by contract. If not otherwise agreed between Brocacef and the other party, the licence will cover first usage and the first edition if applicable.

14.3 If the other party wishes to use a design for a purpose other than defined in the order confirmation, the other party must acquire Brocacef's explicit consent.

14.4 Brocacef will never be liable for any infringement of copyrights, exclusive rights to drawings or models or patent rights of third parties with products produced by Brocacef by order of the other party.

14.5 The other party will notify Brocacef of any infringement of intellectual property rights in connection with the products delivered as soon as the other party becomes aware of such infringement.

14.6 The other party will not disclose in any manner whatsoever confidential information, including but not limited to business information on Brocacef provided to the other party.

15 **Governing Law and Competent Court**

15.1 All offers by Brocacef, agreements made between Brocacef and the other party and deliveries by Brocacef are governed by Dutch law.

15.2 Any disputes between Brocacef and the other party that cannot be resolved amicably will be submitted to the competent court in the District of Midden-Nederland.