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# Terms of Sale

These Terms of Sale constitute a contract between you and Securos. Please carefully review these Terms of Sale because the Terms of Sale set forth the rights, obligations, limitations and exclusions that apply to you.

**1. AGREEMENT** By purchasing or guarantying the purchase of the products from Securos, you agree with Securos' Terms of Sale. Securos' Terms of Sale may not be altered, supplemented or amended by use or reference to any other documents or agreements, unless agreed by Securos in writing. Securos hereby objects to any references of you to your Conditions of Business.

Subject to the provisions set forth below, all provisions in these Terms of Sale retain their validity, even if Securos and you agree to amend or supplement the sales contracts or, as part of future agreements on other contractual products, draw up other sales contracts without again making express reference to these terms and conditions.

**2. CASH SALE** All domestic purchases shall be paid by cash, check or credit card in the net amount of the invoice on or before the time of delivery unless Securos agrees at Securos' sole discretion to extend to you an open account or other credit. All international purchases shall be paid by credit card in the net amount of the invoice on or before the time of delivery.

**3. OPEN ACCOUNT SALE** All purchases on open account are due and payable within 30 days of receipt of the invoice unless you and Securos agree in writing to a different payment plan. Amounts unpaid by the 30th day of your receipt of the invoice incur interest of 8 percentage points above the base interest rate p.a. Interest is compounded monthly. If you transfer your practice, become insolvent, are named in any legal, arbitration or other proceeding to collect money, or file bankruptcy, then all amounts owed to Securos become immediately due and payable. Credit card payments are acceptable at the time of ordering; however, credit cards cannot be used to pay for products purchased through delayed billing. A surcharge may be imposed on all statement balances paid by credit card.

**4. ERRORS** Securos may correct at any time all extension, price, description and other errors on any invoices, statements or other documents. The document, as corrected, shall be the effective document.

**5. PAYMENTS** All payments shall apply first to attorney fees and collection costs, then to accrued interest on oldest unpaid invoices, and then to principal due on oldest unpaid invoices, unless otherwise indicated by your remittance advice. You shall pay Securos a EUR 25.00 service fee on all returned checks.

**6. RETENTION OF TITLE** The delivered products shall remain Securos' property until full payment of the purchase price and any ancillary claims, and settlement of any previous deliveries of Products. Until then you, at your expense, shall store the products for Securos separate from other products and shall insure them against fire and water damage for Securos' benefit. Securos shall be notified without undue delay of any seizures and other interventions by third parties. In the event that the products were processed or commingled with other products in proportions that are no longer determinable, and the products subject to the retention of title are to be considered a significant part of the new product, you shall transfer co-ownership in the product to Securos to secure the mentioned claim while simultaneously agreeing that you shall keep such products for Securos separate from other goods. You are entitled to sell the products in your ordinary course of business. You shall require Securos' express consent to pledge or transfer the products to a third party as chattel mortgage. Any claims arising from the sale are deemed assigned to Securos in the amount of Securos' claims without another separate agreement being required in the individual case, even if you have manufactured or processed the products. As long as you properly meet your payment obligations towards Securos, you shall be authorized to collect such claims for Securos' account, but Securos shall be entitled to notify your customers, which are to be named upon request, about the transfer and to issue instructions.

**7. DEFAULT** If your account is not paid when due, or if you have not complied with any other term or condition of your application for credit, these Terms of Sale, or any other agreement with Securos, then you are immediately in default without further notice to you.

**8. SECURUS' REMEDIES ON DEFAULT** If you are in default, then Securos may, at Securos' sole discretion and without further notice to you, exercise any one or more of the following actions and remedies: (a) temporarily or permanently suspend any further shipments to you, (b) temporarily or permanently suspend your credit, (c) temporarily or permanently ship to you only if you pay cash on delivery ("COD") or if you pay in advance, (d) temporarily or permanently close your account with Securos and terminate any further transactions with you, (e) exercise Securos' rights as a secured creditor under applicable law, (f) collect the amounts owed to Securos, including without limitation initiating a lawsuit, and (g) take any other action or pursue any other remedies which Securos deems appropriate. Once Securos takes any action or remedy because of your default, including without limitation the remedies listed in this paragraph, Securos is not obligated to (a) restore your account and credit or (b) provide you with any other account or credit terms even if you pay the past due amounts in full and satisfy any other requirements of Securos.

**9. RISK OF LOSS** Loss or damage that occurs during shipping by a carrier selected by Securos is Securos' responsibility. Loss or damage that occurs during shipping by a carrier selected by you is your responsibility.

**10. DELAYS** Securos is not responsible for the inability to provide goods purchased or delay in providing goods purchased caused or effected by accidents, strikes, weather, war, riots, general shortage of products or labor by manufacturers, interference or obstruction of transportation routes, carrier shortages, damage to carrier, damage to goods by carrier, any act of God, failure of utilities or telecommunications, or other causes beyond Securos' control. Securos shall perform as soon as practicable after the cause of the delay is removed.

**11. TAXES & SHIPPING CHARGES** You will pay all applicable shipping charges and sales taxes that arise because of the delivery of the products to you. All orders are shipped UPS Ground unless otherwise requested. Domestic shipping and delivery charges will be provided upon your request. International shipping and delivery charges are dependent on the location, and shall be disclosed upon request. The taxes and shipping and delivery charges will appear on the invoice, or you will directly pay the shipper and tax authority.

## 12. RIGHTS REGARDING MATERIAL DEFICIENCIES AND DEFICIENCY IN TITLE

**A. LIMITED WARRANTY.** Securos warrants the Securos orthopedic implant, the Securos patent or patent pending surgical tool, instrument, or device, orthopedic surgical instrument, power equipment (the "Securos Products"), for the warranty period of one year following the

transfer of risk, against (i) material defects in workmanship and materials caused by normal use and (ii) deficiency in title. The Securos Products are free of defects if they possess the agreed characteristics on transfer of risk or if they are suitable for use as assumed in the contract or for ordinary use, or if they display the characteristics which you can expect from the type of Securos Product taking account of public statements by Securos. This warranty does not apply to any Securos Product for which the instructions given by Securos were not strictly followed.

**B. APPLICATION OF WARRANTY.** This warranty does not apply to any Securos Product (i) which has been repaired or altered by persons other than Securos or other than any third party admitted by Securos to affect the Securos Product's structure, integrity, stability, or reliability, or (ii) which was subjected to misuse, neglect, accident or abnormal use if the respective defects can be attributed to the above circumstances and you cannot show that the defect is not due to these circumstances.

**C. DISCLAIMER OF WARRANTIES.** Securos makes no other express or implied warranties, including without limitation, no implied warranty of merchantability, and no implied warranty of fitness for a particular purpose unless otherwise agreed. This warranty is the full and complete statement of Securos' warranty of the Securos Products set forth above, constitutes the entire and completely integrated warranty of Securos, and supersedes all other statements.

**D. OBLIGATION TO INSPECT.** You are obliged to check the Securos Products immediately for any defects. You must notify Securos immediately in writing of defects in the Securos Products, but no later than within one week of the transfer of risk, giving all information of relevance and required for rectification of the defect. Defects which cannot be discovered within the specified period, even with careful examination, must be reported to Securos immediately in writing on discovery.

**E. REMEDIES.** Securos will decide whether to repair the Securos Products or parts thereof or whether to deliver a new Securos Product or parts thereof. Several attempts at subsequent fulfillment are permitted. If subsequent fulfillment fails completely, you can choose to demand a reduction in the purchase price or to withdraw from the respective contract. Further-extending rights are excluded. This does not apply to claims for damages arising from guaranteed characteristics or in cases where Securos has fraudulently concealed a defect. Any Securos Products returned must (i) be thoroughly cleaned, (ii) have been used under normal recommended conditions and within standard practices and techniques, and (iii) show no evidence of misuse, abuse or damage. A refund or credit shall only be issued if the Securos Product meets each of the above requirements. Securos Products that Securos authorizes to be returned will be picked up by UPS or Securos' representative. You guarantee that the Securos Products returned were properly stored, handled and shipped so as to not effect quality.

**13. LIABILITY.** Claims for damages against Securos are excluded irrespective of the type of neglect of duty, including prohibited actions, unless there was willful or grossly negligent action. If there is a breach of essential contract undertakings, Securos is liable for any negligence, but only to the amount of the anticipated damage. Claims for lost profit, expenditures that were not saved, third party claims for damages as well as indirect and consequential damage cannot be demanded unless a characteristic of state guaranteed by Securos has the specific purpose of protecting you from such damage. The restrictions and exclusions of liability set forth above do not apply to claims arising from the fraudulent behavior of Securos or to liability for guaranteed characteristics of state, liability in accordance with the product liability law, or damage arising from injury to life, physical injury or injury to health. To the extent that the liability of Securos is excluded or restricted, this also applies to salaried staff, employees, representatives and vicarious agents of Securos.

**14. DISPUTES, & AUTHORIZATION FOR VENUE & JURISDICTION AND ATTORNEY FEES AND COSTS** Securos' principal place of business and office are located in 78576 Emmingen, Federal Republic of Germany. All disputes between you and Securos, including but not limited to actions to obtain payment, are governed by German law except for its conflict of law principles. The provisions of the UN convention on the sale of goods expressly do not apply. The venue shall be located in Stuttgart, Germany. You expressly submit to the personal and subject matter jurisdiction and venue of the courts in Stuttgart, Germany. You and Securos are the only parties to this agreement, and there are no intended or incidental third party beneficiaries. In any dispute the prevailing party shall recover from the other party reasonable attorney fees and costs, collection agency fees, and any other costs incurred.

**15. CHANGES IN TERMS** At Securos' sole discretion, Securos can change Securos' Terms of Sale at any time by notifying you at your statement address at least 30 days in advance of the effective date of the change. All changes to the Terms of Sale will apply to all purchases, returns or other transactions that occur on or after the effective date of the change. You agree with the Terms of Sale by making purchases, returns or other transactions with Securos, or by continuing to owe money to Securos, on or after the effective date of the change. If you disagree with the changes in the Terms of Sale, you shall stop any further transactions with Securos.

## 16. MISCELLANEOUS

**A. INVALID PROVISIONS.** If one of the provisions of these Terms of Sale or of any sales contract is or becomes invalid or impracticable, this does not affect the effectiveness of any of the other provisions or agreements. In such an event the invalid provision is replaced by a provision which comes closest to the intended purpose of the invalid provision. This applies correspondingly in the event of a contractual gap.

**B. COMPLETE CONTRACT.** These terms and conditions, including the sales contracts, contain all agreements reached between the parties; there are no verbal subsidiary agreements. Amendments and supplements must be in writing to be effective. This applies also to the waiver of the written form requirement.

**C. TERMS AND CONDITIONS.** General terms and conditions, in particular your conditions of purchase, have no validity even if Securos has not expressly contradicted them after transmission by you.

**D. INTERPRETATION.** This Terms of Sale is in the English language only, which language shall be controlling in all respects. Any versions of this Agreement in any other language shall be for accommodation only and shall not be binding upon either party. All communications and documentation to be furnished under this Agreement shall be in the English language.