

# Vygon General Terms and Conditions of Export Sales



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## 1. Preamble

The “Seller” means VYCON, a French company organized as a “Société Anonyme à Directoire et Conseil de Surveillance” with a share capital of EUR 20,394,496, having its registered office at 5 Rue Adeline – 95440 ECOUEN (France), registered with the Pontoise Registry of Trade and Companies under No. 325 241 750.

The Seller develops, produces and markets EC marked medical devices and surgical equipment with a focus on single-use sterile medical and surgical devices. Such devices and equipment are, in particular, subject to marketing, post market surveillance and quality assurance requirements under the 93/42/EEC Medical Device Directive of the Council of the European Union, as amended, and the corresponding guidance, guidelines and standards, in particular with respect to instructions for use, transport and storage and the corresponding labelling.

The “Buyer” means the purchaser of any goods under a contract of sale with the Seller.

## 2. Contract of Sale – Formation and conditions

**2.1** According to French law, the contract for the sale and purchase of any goods supplied by the Seller (the “Goods”) shall be subject to these conditions of export sales (“Conditions”) to the exclusion of all other terms and conditions (including any terms which the Buyer purports to apply under any purchase order, confirmation of order or other document). No variation to these Conditions will be effective unless agreed in writing by the Seller. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Seller which is not set out in the Contract. To the extent any previous representation, warranty, collateral contract or assurance was made to the Buyer, the Buyer waives all rights and remedies in respect of it.

**2.2** Each order for Goods placed by the Buyer, whether or not based on a purchase order or quotation, shall be deemed to be an offer to purchase the Goods subject to these Conditions. Orders must be sent in writing on the Buyer’s letterhead paper. No order shall be deemed accepted by the Seller until it is acknowledged in writing or, if earlier, the Seller delivers the Goods to the Buyer. After confirmation of the order by the Seller, the contract may not be cancelled by the Buyer without the written consent of the Seller which shall be conditional on the Seller being indemnified by the Buyer against all loss or damage which arises or may arise out of such cancellation.

**2.3.** The Buyer may not assign or otherwise transfer its rights and obligations under a contract of sale with the Seller without the latter’s prior written consent.

**2.4.** In the event the Seller agrees that the Buyer may on-sell the Goods, the Buyer represents and warrants that such on-sale will be in full compliance with the applicable regulations governing medical devices. The Buyer further acknowledges that if a sales licence is required to on-sell the Goods, such licence will in no way confer any exclusivity rights to on-sell in a given territory.

**2.5.** Any authorisation to on-sell will automatically lapse in the event of the Buyer being unable to pay its debts within the meaning of applicable insolvency legislation, ceasing to trade or company dissolution or any event which is analogous to the above.

**2.6.** The Seller may at all times make changes to the specifications, size, format and packaging of the Goods and the images, photographs and descriptions which are shown on the Seller's catalogue (whether printed or on-line) are non-contractual and non-binding.

**2.7.** The Buyer represents and warrants that it has all the authorizations, qualifications and as the case may be licenses required for buying and, as the case may be, on-selling the Goods and the Buyer undertakes to verify, in the case of on-sales, that the sub-buyer meets the same requirements, including, for Goods which are intended for use solely by healthcare practitioners, verification that the end-user has the appropriate qualifications.

**2.8.** For Goods which are labelled as single-use, sterile and ready for use,, the Buyer shall not permit any re-use and shall inspect the Goods at the time of delivery and before use in order to identify any risk of alteration of quality during transport or storage, which shall be effected at all times according to the Seller's instructions, in particular regarding humidity and temperature.

### 3. Delivery Date and Passing of Risk

**3.1** Any delivery dates quoted for Goods by the Seller are estimates only and time for delivery shall not be of the essence. The Seller reserves the right to deliver the Goods in instalments.

**3.2** The non-price provisions of the contract of sale shall be governed by the FCA Incoterm of the Incoterms 2010. Delivery shall take place when the Goods are loaded at the premises of the Seller or other delivery location agreed with the Seller (the "Delivery Location"). Risk in the Goods shall pass to the Buyer when the Goods are delivered under the FCA Incoterm. If the Buyer fails to accept delivery or arrange for collection of the Goods when they are ready for delivery the Seller reserves the right to claim compensation from the Buyer with respect to storage costs, interest and insurance premiums.

**3.3** If delivery of all or some of the Goods is hindered, prevented or delayed by circumstances beyond the reasonable control of the Seller, the Seller shall not be liable for any loss or damage caused thereby and shall have the option to cancel the contract wholly or in part or to suspend or delay delivery or further delivery without incurring any liability to the Buyer provided that, if the event in question continues for a continuous period in excess of three months, the Buyer shall be entitled to give notice in writing to the Company to terminate the contract.

**3.4** The quantity of the Goods delivered under each order shall be recorded by the Seller upon dispatch from the Seller's premises and the record of the Seller shall be accepted by the Buyer as conclusive evidence of the quantity delivered.

### 4. Product acceptance and returns

**4.1.** The Buyer is responsible for inspection of the Goods upon arrival at its place of business, as part of the quality assurance and tracking systems required throughout the healthcare supply chain. Failing the notification in writing of a claim or dispute regarding the quantity, quality or any other defect of the delivered Goods within the eight days following arrival of the Goods at the Buyer's place of business, the Goods shall be considered as finally accepted.

**4.2.** The temperature and moisture levels, when appropriate, of the Goods delivered under each order shall be recorded by Seller upon dispatch from the Seller's premises and the record of the Seller shall be accepted by the Buyer as conclusive evidence of the temperature and moisture of the Goods at the time of delivery. Temperature and moisture sensitive labelling by the Seller is available at the Buyer's cost upon request, as a service of assistance to the Buyer for his quality assurance duties, particularly with regard to the monitoring and recording of the temperature and moisture chain throughout transport and thereafter storage. Any claim or dispute will have to be supported by evidence which the Seller has the right to verify. The Buyer may not, without the Seller's agreement in writing, perform any correction or other alteration of the Goods which are the subject matter of the claim or dispute.

**4.3.** Return of Goods may exceptionally be effected subject to the prior agreement of the Seller in writing, the costs and risks of a return being always at the Buyer's charge. No return shall be accepted after the expiry of a three-month

time period after the date of delivery. In respect of equipment Goods, returns shall not be accepted for equipment other than catalogue equipment.

**4.4.** Accepted returns will give rise to a credit note if and when the returned Goods have reached the Seller's place of business and quality and quantity inspection justify such credit note.

**4.5.** Goods returned without the Seller's advance acceptance shall be stored at the Buyer's expense and shall in no event give rise to a credit note.

## 5. Price and Payment

**5.1** Unless otherwise agreed by the Seller in writing, the purchase price for the Goods shall be the price set out in the Seller's price list current on the date of the order placed by the Buyer (the "Stated Price"). The Seller reserves the right to vary its price list without advance notice at any time. The Stated Price shall be in euros, and shall apply net and ex-works, inclusive of packaging save for special packaging requests on the part of the Buyer, which shall be charged in addition and exclusive of any value added tax and all costs, charges, loading, unloading, carriage, customs duties, custom clearance costs and insurance, which shall all be paid by the Buyer.

**5.2.** Any order for a value of under 2'000 euros excluding tax will give rise to an additional charge of 750 euros as coverage for fixed costs.

**5.3.** Unless otherwise agreed by the Seller in writing, payments shall be made in euros either by irrevocable letter of credit confirmed by a bank which is acceptable to the Seller or by wire transfer to the bank account identified on the Seller's invoice, within 30 days of the date of invoice of the Goods. The Seller reserves the right to suspend expedition of the Goods until it is satisfied that the payment conditions are met. Time for payment shall be of the essence. When deliveries are spread over a period, each consignment, at the option of the Seller, shall be invoiced as dispatched and each invoice shall be treated as a separate account and be payable accordingly. Buyer shall make all payments in full without deduction or withholding. No discount shall be granted by the Seller for early payment.

**5.4.** No dispute on part of Goods delivered to the Buyer shall allow the latter to delay payment for undisputed Goods.

**5.5.** In cases of late payment, interest shall accrue automatically, without need of a formal notice, on a monthly basis, and shall be calculated pro-rata every day at the rate specified in article L 441-6 of the French Commercial Code from the date the account becomes overdue until the date of payment in full whether before or after any judgement.

**5.6.** In addition to interest, late payment shall automatically give rise to a fixed delay damage equal to 18% of the amount due and such 18% amount shall be due to the Seller; in addition to the amount due and interest, without need of a formal notice.

**5.7.** Without prejudice to any other rights and remedies of the Seller, any default of the Buyer in making payment on the due date shall automatically entitle the Seller (i) to suspend deliveries under this contract or any other contract, which payment has not been made, so long as the default continues and without any obligation to refund payments received on account for future deliveries, (ii) to cancel any agreed payment term or extension, even by way of bill of exchange, on all outstanding invoices made to the Buyer, (iii) to enforce the retention of title provided in 6. below and obtain the return of the Goods at the Buyer's cost on first demand to the latter and (iv) to treat the contract of sale as repudiated by the Buyer.

**5.8.** The Seller has the right to make any delivery subject to cash payment or the supply of guarantees in the event of any deterioration in the Buyer's creditworthiness. The Seller may also fix credit limits for any Buyer.

## 6. Title

**6.1** Title to the Goods shall not pass to the Buyer until the Seller has received, in full (in funds credited to the Seller's account), all sums due in respect of the Goods.

**6.2** Until ownership of the Goods passes to the Buyer, the Buyer shall (a) hold the Goods on a fiduciary basis for the Seller; (b) store (at the Buyer's cost) the Goods separately from all other goods such that they remain readily identifiable; (c) not destroy, deface, or obscure any identifying mark on the Goods; (d) keep the Goods insured on behalf of the Seller

for their full price against all risks to the reasonable satisfaction of the Seller; (e) not create and pledge, encumbrance or other security interest over the Goods. Buyer shall, on request, provide evidence of such insurance to Seller. Until ownership of the Goods passes to the Buyer, if a third-party makes any claims in connection with the Goods, including by way of seizure, the Buyer shall object and immediately inform the Seller thereof to enable it to assert and preserve its rights.

**6.3.** In the event of the Buyer being authorized to on-sell the Goods as said in article 2. above, the Buyer shall either immediately pay to the Seller any amount remaining due on the Goods which are being on-sold or procure that the party to who the Goods are on-sold is made fully aware of and accepts the Seller's retention of title.

## 7. Warranty

**7.1.** The Seller warrants and represents that, under normal use and service on or before the specified expiration date, or if no such date is indicated on the Good(s), for a period of one (1) year from the date of delivery to the Buyer:

- the Goods will be of satisfactory quality and fit for their designated purpose;
- the Goods will be free from defects in design, material and workmanship;
- the Goods will comply with all statutory requirements, regulations, applicable standards and good practices, including physical and chemical testing, applicable in the EU and relating to the Goods and their sale and supply and performance.
- the Goods (where used and maintained in accordance with the Seller's instructions for use will be so formulated, designed, constructed, finished and packaged as to be safe and without risk to health;

**7.2.** The Seller's warranty applies only to those Goods which can be identified as sold by the Seller, i.e. Goods which can be identified by serial or lot number. The Seller's warranty is excluded in the event of the Buyer's wilful damage, negligence, incorrect storage or use not complying with the Seller's instructions for use (whether given on the packaging of the Goods or separately), movement or modifications made to the Goods by the Buyer, as well as for defects caused by wear and tear, and is, to the extent permitted by applicable law, exclusive of any other warranties whatsoever whether expressed or implied, statutory or otherwise, as to quality of the Goods or their fitness for any particular purpose. Similarly, the Seller's warranty shall be excluded for damage caused by materials, technical documents, data or methods supplied by the Buyer or of which the Buyer has required the use.

**7.3.** The Seller's warranty in respect of the Goods shall be limited, to the extent permitted by applicable law, to repair or replacement of the Goods not complying with 7.1. above.

**7.4.** The warranties set forth in this section are exclusive and in lieu of any implied warranties of merchantability, fitness for particular purpose or other warranty of quality, whether express or implied. The Seller shall not be liable for any incidental or consequential damages.

**7.3.** The limitation in 7.2. above shall not apply to bodily injuries suffered by the Buyer's staff or any third party as a result of a breach of the warranties stated in 7.1..

## 8. Liability and insurance

**8.1** Subject to clause 7.2, the Seller's total financial liability arising from (a) any breach of these Conditions, (b) any use made or resale by the Buyer of the Goods; and (c) any action or omission, including negligence, arising in connection with any contract of sale of the Goods shall be limited to the Stated Price. The Seller shall not be liable to the Buyer for any loss of profit, loss of business, loss of data, loss of amenity over a right or asset, loss of goodwill, interruption of service or other arising in connection with any contract of sale.

**8.2** Nothing in these Conditions excludes or limits the liability of the Seller for fraudulent misrepresentation or for death or personal injury caused by the Seller's negligence or any other matter for which the Seller may not, under applicable law, exclude or attempt to exclude its liability.

**8.3.** The Seller shall, on demand, produce to the Buyer its current certificate of insurance covering civil liability, displaying the duration, nature and amount of the coverage.

**8.4.** The Buyer shall, similarly, produce its current insurance certificate on demand, with similar details as well as a confirmation of its insurer's waiver of recourse and subrogation against the Seller for amounts in excess of the Stated Price. The Buyer shall further procure that all parties with whom it shall contract in respect of the Goods shall agree to provide the same waiver of recourse clause on the part of their insurers, respectively.

## 9. General

**9.1** Any communication given hereunder shall be deemed to have been validly given if communicated personally, by registered letter or by facsimile (confirmed by a registered letter) to the registered office of the relevant party. Written communication can also be made via email. However, the Party making a notification via email shall bear the burden of proof of receipt by the other Party.

### 9.2. Intellectual Property

Notwithstanding the sale, the Seller retains sole title to all intellectual property rights attached to the Goods or marking them as well as to the instructions for use and other documentation related thereto, including patents, patent applications, trademarks, software, data bases, trade secrets, know how, design and model rights and copyright.

No transfer or license of intellectual property rights of the Seller occur as a result of the sale of the Goods and the Buyer represents and warrants that it shall not, directly or indirectly, including as a result of the actions of its employees, representatives and management, infringe the Seller's intellectual property rights.

In particular, the Buyer shall not reproduce, decompile, disassemble, decode, reproduce, redesign or otherwise reverse engineer the Goods or any part thereof.

**9.3.** No waiver by the Seller of any breach of these Conditions by the Buyer shall be a waiver of any later breach of the same or any other provision. Failure or delay by the Seller in enforcing any rights under these Conditions shall not be a waiver of its rights.

**9.4.** If the Seller finds itself, in spite of ordinary care, unable, by reason of a duly evidenced case of force majeure, i.e. an event beyond its control (including, without limiting the generality thereof, damages to or destruction of plants, laboratories, inventories and supplies, wars, insurrections, riots and embargoes, difficulties in obtaining materials or shipping facilities, or inability to obtain export or import licenses from the relevant governmental authorities) to carry out its obligations hereunder in whole or in part, the obligations of such party, to extent that they are affected by such force majeure and upon giving prompt notice to the other party, shall be suspended as long as the impossibility so caused shall endure. The situation created by such force majeure shall be remedied as soon as possible with all reasonable dispatch.

**9.5.** If any provision is found by an authority of competent jurisdiction to be wholly or in part unenforceable, it shall be deemed severable and the remaining provisions of these Conditions shall continue in force.

**9.6.** These Conditions shall be governed by and interpreted in accordance with the Laws of France. Any dispute relating to the existence, interpretation, performance, and termination of these Conditions and/or any subsequent sale contract shall be referred to the commercial court ("Tribunal de Commerce") of Paris, France which the Parties agree shall have exclusive jurisdiction even in the event of third party appeals or multiple respondents or consolidated proceedings.