

These are the exclusive "Terms and Conditions of Sale" that govern the sale of products ("Products") by Axogen Corporation ("Seller") to you ("Buyer"). Notwithstanding anything herein to the contrary, if a written contract signed by both parties is in existence covering the sale of the Products covered hereby, the terms and conditions of said contract shall prevail. **In event the event the parties wish to establish a consignment relationship, a separate signed, written Consignment Agreement must be entered into between the parties.** Seller's order confirmation, including but not limited to, these Terms and Conditions of Sale (collectively, this "Agreement") 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. This Agreement prevails over any of Buyer's general terms and conditions of purchase regardless of 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 this Agreement. This Agreement may only be amended or modified in a writing which specifically states that it amends this Agreement and is signed by an authorized representative of each party.

1. Delivery and Shipping. The Products will be delivered within a reasonable time after the receipt of Buyer's purchase order. Seller shall not be liable for any delays, loss, or damage in transit. All Products are shipped FOB Origin with all shipping, handling, and insurance charges (including any special deliveries) prepaid by Seller and then invoiced to Buyer. Seller 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. Title and Risk of Loss. NO RETURNS. Seller shall invoice Buyer, and title, risk of loss and ownership of the Products are transferred to Buyer at the time when Products are shipped from Seller. Buyer shall be responsible for any loss or damage to Products resulting from Buyer's use, handling or storage. **PRODUCTS ARE NON-RETURNABLE.**

3. Inspection and Rejection of Nonconforming Products. Buyer shall inspect the Products immediately upon receipt. ("Nonconforming Products" means only the following: (i) Products shipped are different than identified in Buyer's purchase order; or (ii) Product(s)'s label or packaging incorrectly identifies its contents.) If Buyer timely notifies Seller of any Nonconforming Products, Seller shall, in its sole discretion, (i) replace such Nonconforming Products with conforming Products, or (ii) credit or refund the Price for such Nonconforming Products, together with any reasonable shipping and handling expenses incurred by Buyer in connection therewith. Buyer acknowledges and agrees that the remedies set forth in this section are Buyer's exclusive remedies for the delivery of Nonconforming Products. Except as explicitly provided in this section, all sales of Products to Buyer are made on a final, one-way basis and **Buyer has no right to return Products purchased under this Agreement to Seller.**

4. Price. Buyer shall purchase the Products from Seller at Seller's then current effective pricing terms (the "Price[s]"). Pricing may change annually. All Prices are exclusive of all sales, use, 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, Seller's income, revenues, gross receipts, personnel, or real or personal property or other assets.

5. Payment Terms. Buyer shall pay all invoiced amounts due to Seller promptly upon receipt of Seller's invoice and not later than the due date on Seller's invoice, if any.. Buyer shall make all payments hereunder by the payment method on Seller's invoice and in US dollars (unless otherwise specified in Seller's invoice). Buyer shall pay interest on all late payments at the lesser of the rate of [1.5%] per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Buyer shall reimburse Seller for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees. In addition to all other remedies available under this Agreement or at law (which Seller does not waive by the exercise of any rights hereunder), Seller shall be entitled to suspend the delivery of any Products if Buyer fails to pay any amounts when due. Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Seller, whether relating to Seller's breach, bankruptcy, or otherwise.

6. Warranty, Disclaimer and Limitation of Liability. Warranties, if any, for all Products are as expressly set forth on the labeling that pertains to the Product(s). Due to the numerous factors involved in the shipment, delivery, and implantation of the Products, including surgical technique and operative conditions, except as set forth in the immediately preceding sentence, **SELLER EXPRESSLY DISCLAIMS ANY AND ALL EXPRESS OR IMPLIED WARRANTIES REGARDING THE PRODUCT, INCLUDING, BUT NOT LIMITED TO, MERCHANTABILITY, QUALITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.**

IN NO EVENT SHALL SELLER 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 BUYER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

IN NO EVENT SHALL SELLER'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 SELLER FOR THE PRODUCTS SOLD HEREUNDER.

7. Indemnity. Buyer agrees to hold Seller and its affiliates harmless from, and will indemnify Seller and its affiliates, for any and all liability or loss, including, without limitation, any claims, losses, or injuries arising from the Buyer's failure to follow any instructions for use of the Products or the use of any Products that have been modified or altered by the Buyer.

8. Insurance. During the term of this Agreement and for a period of five (5) year thereafter, Buyer shall, at its own expense, maintain and carry insurance, including but not limit to commercial generally liability and products liability, in full force and effect, in commercially reasonable amounts, with financially sound and reputable insurers. Upon Seller's request, Buyer shall provide Seller with a certificate of insurance from Buyer's insurer evidencing the above insurance coverage.

9. Force Majeure. Neither party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations of Buyer to make payments to Seller hereunder), when and to the extent such failure or delay is caused by or results from acts beyond the impacted party's reasonable control ("force majeure" events).

10. Buyer's obligations; Regulatory & Quality Assurance Terms.

(a) Quality Controls. **BUYER AGREES TO STORE ALL PRODUCTS IN ACCORDANCE WITH ALL LABELING REQUIREMENTS, INCLUDING BUT NOT LIMITED TO THOSE RELATED TO TEMPERATURE. SPECIFICALLY, BUYER AGREES THAT IT CAN STORE AVANCE® NERVE GRAFTS AT (-)40°C (NEGATIVE 40 DEGREES) OR BELOW.**

BUYER AGREES TO CONTROL ALL PRODUCTS IN ACCORDANCE WITH ALL APPLICABLE FEDERAL AND STATE LAWS, GUIDELINES AND REGULATIONS RELATING TO THE SPECIFIC PRODUCT, AND THE STANDARDS FOR JOINT COMMISSION ACCREDITATION AND CERTIFICATION (THE "JACCO" OR "JOINT COMMISSION" STANDARDS.

(b) Licensure, Temperature, Record Retention.

(i) **Licensure.** Both parties will maintain all licenses, registrations, and other authorizations (and associated documentation) as required to handle, store and dispense the Products. Each party will inform the other within five (5) days of any changes regarding the foregoing.

(ii) **Freezer Logs.** Certain Products require special temperature storage conditions and precautions in accordance with the caution label or other labelling attached to each package. With regard to these Products, Seller will not accept responsibility or liability for any losses sustained through failure to store or handle as directed by the Product(s)' label or other labelling. If Avance® Nerve Grafts, are purchased Buyer **must** maintain freezer logs to demonstrate that proper storage conditions were maintained.

(iii) **Record Retention.** Buyer shall maintain the records related to the storage, handling, and dispensing of the Products for seven (7) years following the usage of any Products. These records include but are not limited to: (A) Equipment Qualification Reports; (B) Storage Temperature Monitoring Records; and (C) Non-Conformance & Corrective and Preventive Action Records. Buyer agrees to provide any records or freezer logs to Seller within five (5) days of Seller's request.

(c) **Complaint Reporting.** Buyer will: (i) assist Seller in investigating and resolving all medical and non-medical complaints related to the Products; (ii) follow a formal complaint procedure to investigate any deficiencies in the Products noted by Seller; (iii) provide Seller with any information relating to the Products, which is necessary to address a complaint or adverse event related to the Products.

(d) Product Recall & Withdrawal.

(i) **Recall Plan.** In the event of a recall related to the Products: (A) Seller will notify Buyer within an appropriate time frame (based on Seller's assessment of risk to the patient) of, the decision to recall the affected Products, and the recall plan; (B) the recall plan will detail: the actions to be taken by Seller and Buyer, the notification requirements for the regulatory authorities, and the responsibilities of Seller and Buyer in regards to this notification; additionally (C) Seller agrees that if the Products are subject to a recall per the direction of Seller (or per the direction of an appropriate regulatory authority), Seller shall reimburse

Buyer for all shipping costs and actual out-of-pocket expenses Buyer incurs in taking reasonable action in response to the recall.

(ii) **Withdrawal Provisions.** If an investigation turns into a complaint, adverse reaction, or quality issue that leads to a determination that the Products and associated lot or lots pose no safety concerns, but further distribution of the Products is not desired, the Products may be withdrawn from the market at the discretion of Seller management. If Seller decides to voluntarily withdraw the Products the above recall plan will apply.

11. Compliance with Laws. The parties shall comply with all applicable federal, state, and local laws, rules and regulations as may be amended, including but not limited to the federal anti-kickback statute (42 U.S.C. 1320a-7(b)) and the related safe harbor regulations and federal and state privacy laws. No amount paid hereunder is intended to be, nor shall it be construed as, an offer or payment made, whether directly or indirectly, to induce the referral of patients, the purchase, lease or order of any item or service, or the arranging for the purchase, lease or order of any item or service. **NOTICE OF OBLIGATION TO REPORT DISCOUNTS.** If the purchase of Products hereunder includes a discount, such as price reduction, Buyer must fully and accurately report such discount on costs reports or other applicable claims for payment submitted under any federal health care program, as required by federal law (see 42 C.F.R. 1001.952 (h) or (i)).

Buyer is in compliance with and shall comply with all applicable laws, regulations, and ordinances including export and import laws. Buyer represents and warrants that neither it nor any of its affiliates, are presently debarred, suspended, declared ineligible, or voluntarily excluded from participation in any state or federal program or are listed on any restricted party lists maintained by the United States Government or any other governmental or non-governmental entity.

11. EEOC Compliance. Seller and Buyer shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a), which are incorporated herein by reference, as applicable. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ individuals without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin, and to employ and advance in employment qualified individuals with disabilities and protected veterans. If applicable, Seller and Buyer shall also abide by the requirements of 41 CFR 61-300.10 regarding veterans' employment reports and 29 CFR Part 471, Appendix A to Subpart A regarding posting a notice of employee rights. If applicable, Seller and Buyer shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, national origin, and for inquiring about, discussing or disclosing compensation. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability or veteran status.

12. Miscellaneous. Any failure by Seller to insist upon or enforce performance by Buyer of any of the provisions of this Agreement or to exercise any right or remedy under this Agreement or applicable law will not be construed as a waiver or relinquishment to any extent of Seller's right to assert or rely upon any such provision, right or remedy in that or

any other instance. This Agreement will inure to the benefit of and be binding upon the parties and their respective successors, assigns and legal representatives. If any provision of this Agreement is found to be invalid or unenforceable, then the remainder shall have full force and effect, and the invalid provision shall be partially enforced to the maximum extent permitted by law to effectuate the purpose of the Agreement. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Florida. Any civil action or legal proceeding arising out of or relating to this Agreement shall be brought in the courts of record of the State of Florida in Hillsborough County, or the United States District Court for the Middle District of Florida. The provisions of the U.N. Convention on Contracts for the International Sale of Products will not apply to this Agreement. Should a dispute arise between the parties, the parties agree to participate mandatory mediation for at least four hours, and the parties agree to share equally in the costs of the mediation. **Survival.** Provisions of this Agreement which by their nature should apply beyond their terms will remain in full force and effect following any termination or expiration of this Agreement.

13. Contact Persons. Buyer shall designate two on location contact persons there shall be: (1) an “**Administrative Contact Person**” to function as the authorized liaison between Seller and Buyer to handle administrative and logistical matters that may arise; and (2) a “**Quality Contact Person**” to be responsible for overseeing activities that impact the Products and assuring the storage and control of the Products. Contact People may be amended at any time upon notice from the affected party to the other.

All orders and any correspondence pertaining thereto should be sent to: customer@axogeninc.com