



AUXANO MEDICAL, LLC

TERMS AND CONDITIONS OF SALE

Below outlines the terms and conditions of sale (the “Terms”) between Auxano Medical, LLC (“Auxano”) and any purchaser of Auxano’s products (“Buyer”). Auxano and Buyer may be individually referred to as a “Party” or collectively as the “Parties”.

A. Acceptance and Agreement

ALL SALES FROM AUXANO ARE SUBJECT TO AND EXPRESSLY CONDITIONED UPON THE TERMS, AND UPON ANY BUYER’S ASSENT THERETO. NO VARIATION OF THESE TERMS SHALL BE BINDING UPON AUXANO UNLESS MUTUALLY AGREED TO IN WRITING AND SIGNED BY AN OFFICER OR OTHER AUTHORIZED REPRESENTATIVE OF BOTH PARTIES. ANY ADDITIONAL OR DIFFERENT TERMS, ADDITIONS, AND/OR EXCEPTIONS PROPOSED BY BUYER (WHETHER IN A PURCHASE ORDER, OTHER PRINTED FORM, IMPLIED, OR ELSEWHERE) ARE OBJECTED TO AND HEREBY REJECTED, UNLESS SUCH TERMS OR EXCEPTIONS ARE APPROVED SPECIFICALLY BY AUXANO IN WRITING. IN THE ABSENCE OF BUYER’S ACCEPTANCE HEREOF, AUXANO’S COMMENCEMENT OF PERFORMANCE OR AUXANO’S ACKNOWLEDGEMENT OF A PURCHASE ORDER SHALL BE FOR BUYER’S CONVENIENCE ONLY AND SHALL NOT BE CONSTRUED AS AUXANO’S ACCEPTANCE OF ANY DIFFERENT OR ADDITIONAL TERMS CONTAINED IN A PURCHASE ORDER. IN ADDITION, BUYER’S ACCEPTANCE OF ANY PRODUCT SHALL BE DEEMED TO BE AN ACCEPTANCE OF THESE TERMS.

B. Pricing; Payment

Pricing of any product sold by Auxano under the Terms shall be mutually determined by Auxano and Buyer, prior to or at the time of purchase. List price of Auxano products will be applied on any invoice where Buyer and Auxano have not mutually agreed to another associated price. Pricing shall not be dependent on pricing offered in the past or currently to any other Buyers.

Any invoice received by Buyer from Auxano shall be paid on net thirty (30) terms from the date of the invoice. Unpaid balances over the thirty (30) days shall be subject to a 1.5% monthly service charge. A Buyer’s obligation to pay Auxano is absolute and is not subject to any factor, counterclaim, deduction, withholding, holdback, set-off or any other condition for any reason. Buyer specifically waives any right for any reason to withhold or set off payments it owes to Auxano hereunder, whether available at law, in equity or otherwise. If the financial condition of Buyer results in the insecurity of Auxano, Auxano in its sole discretion, may without notice to Buyer, delay or postpone deliveries of products or change the terms of payment to payment in full or in part in advance of shipment. In the event of default by Buyer in the payment of any purchase price for goods, Auxano, at its sole discretion, without prejudice to any other lawful remedy, may defer delivery, cancel any contract for the sale of goods, or sell any undelivered products on hand for the account of Buyer and apply such proceeds as a credit, without set-off or deduction of any kind, against the contract purchase price. Buyer agrees to pay the balance then due to Auxano on demand. Buyer agrees to pay all costs, including, but not



limited to, reasonable attorney, accounting fees and other expenses of collection resulting from any default by Buyer in any of the terms hereof.

Any use tax, sales tax, excise tax, duty, custom, inspection or testing fee, or any other tax, fee or charge of any nature whatsoever imposed by any governmental authority, on or measured by the transaction between the Parties, except for taxes of Auxano's income, shall be paid by Buyer in addition to the prices quoted or invoiced. In the event Auxano is required to pay any such tax, fee or charge, Buyer shall reimburse Auxano therefor; or Buyer shall provide Auxano, at the time the order is submitted, an exemption certificate or other document acceptable to the authority imposing the tax, fee or charge.

Purchase orders shall be sent to cs@auxanomedical.net. Invoices will be sent by Auxano to the email address indicated on the Buyer's purchase order.

C. Use of Products

Buyer, as well as its agents and representatives, shall strictly use the product(s) in a manner that has been described in the instructions for use that are provided by Auxano. Buyer warrants that the products shall not be adulterated or misbranded within the meaning of the Federal, Food, Drug, and Cosmetic Act. Buyer understands that Auxano customer service shall be available for Buyer to connect with for further explanation of any instruction for use. Contact information for Auxano customer service is listed below.

D. Warranty

Auxano warrants to the Original Buyer only that each Auxano product is free from manufacturing defects in material and workmanship at the earlier of (i) the time of delivery to the Original Buyer or (ii) the expiration date that is stated on the product labeling. "Original Buyer" shall mean the entity that receives the product and pays for such product directly from Auxano.

Shall any covered defect occur during the warranty period, the Buyer shall communicate directly with Auxano. If Buyer seeks to invoke the terms of this warranty, the product must be returned to Auxano customer service. The defective product should be returned promptly, properly packaged and postage prepaid. Loss or damage in return shipment to Auxano shall be the purchaser's risk. Auxano's sole responsibility under this warranty shall be repair or replacement, at Auxano's sole discretion, subject to terms of this warranty and only after Auxano has inspected and confirmed that the product is defective. IN NO EVENT SHALL AUXANO BE LIABLE FOR INCIDENTAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES IN CONNECTION WITH THE ACQUISITION OR USE OF ANY AUXANO PRODUCT. Further, this warranty shall not apply to, and Auxano shall not be responsible for, any loss arising in connection with the purchase or use of any Auxano product that has been altered or repaired by anyone other than an Auxano authorized representative, or which has been subject to misuse, negligence or accident, or which has been used otherwise than in accordance with the instructions furnished by Auxano. THIS LIMITED WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, AND OF ALL OTHER OBLIGATIONS OR LIABILITIES ON AUXANO'S PART, AND AUXANO NEITHER ASSUMES NOR AUTHORIZES ANY REPRESENTATIVE OR OTHER PERSON TO ASSUME FOR IT ANY OTHER LIABILITY IN CONNECTION WITH AUXANO'S PRODUCTS.

AUXANO DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR



APPLICATION OR WARRANTY OF QUALITY AS WELL AS ANY EXPRESS OR IMPLIED WARRANTY TO PATIENTS. No warranty or guarantee may be created by any act, statement, labeling, or product literature, nor may this warranty be modified in any way, except as a result of a writing signed by an officer of Auxano. The limitations on the creation or modification of this warranty may not be waived or modified orally or by any conduct.

E. Limitation of Liability

AUXANO SHALL NOT IN ANY EVENT BE LIABLE FOR INCIDENTAL, EXEMPLARY, INDIRECT, CONSEQUENTIAL, PUNITIVE OR SPECIAL DAMAGES, OF ANY KIND RESULTING FROM ANY USE OR FAILURE OR ACQUISITION OF THE PRODUCTS, (EVEN IF AUXANO HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE) INCLUDING WITHOUT LIMITATION, LIABILITY FOR LOSS OF USE, LOSS OF WORK IN PROGRESS, DOWN TIME, LOSS OF REVENUE OR PROFITS, FAILURE TO REALIZE SAVINGS, LOSS OF PRODUCTS OF BUYER OR OTHER USE OR ANY LIABILITY OF BUYER TO A THIRD PARTY ON ACCOUNT OF SUCH LOSS, OR FOR ANY LABOR OR ANY OTHER EXPENSE, DAMAGE OR LOSS OCCASIONED BY SUCH PRODUCT INCLUDING PERSONAL INJURY OR PROPERTY DAMAGE UNLESS SUCH PERSONAL INJURY OR PROPERTY DAMAGE IS CAUSED BY AUXANO'S GROSS NEGLIGENCE. Claims must be brought within one (1) year of product receipt date, regardless of their nature.

F. Indemnification

Both Parties (individually as the "Indemnifying Party") agree to indemnify the other and the other's officers, directors, employees, and affiliates (collectively the "Indemnified Party") and hold them harmless against any and all claims, actions, liabilities, losses, or damages brought against or incurred by the Indemnified Party (the "Claims") as a result of any specific act, omission, error, violation of law, or breach of these Terms by the Indemnifying Party or any of its employees or agents within the scope of their employment. Auxano will indemnify Buyer and their respective officers, directors, employees, and affiliates against all third-party claims directly arising from (1) a defective and unmodified product or (2) intellectual property infringement from a product that has not been modified. Neither Party shall indemnify the other if a Claim arises from the use of a product and/or the negligence or willful misconduct of the other Party.

G. Confidentiality

The Parties acknowledge and agree that in the purchase of any product under the Terms, either Party or its employees or agents may become aware of certain information that may constitute trade secrets or confidential information of the other Party, including, but not limited to, technical or nontechnical data, procedures, processes, lists, files, reports, protocols, financial data or plans, and patient information, all of which is not commonly known by or available to the general public (the "Confidential Information"). Confidential Information shall not include information that (1) either Party can show was in its lawful possession, without any obligation to keep it confidential, prior to receipt of such Confidential Information; (2) is or becomes generally available to the public, through no wrongful act or breach of a duty of confidentiality on the part of either Party or any third party; (3) is later lawfully obtained by either Party from a third party under no obligation of confidentiality; or (4) is independently developed by either Party without use of or reference to Confidential Information. Both Parties agree, and will require their employees and agents to agree, not to use or disclose such Confidential Information without the prior written consent of the other Party's authorized executive, unless required by law. Both Parties agree to protect Confidential



Information of the other Party in a manner that is no less strict than the level of protection the Party takes to protect their own Confidential Information. This Section will survive the purchase made under the Terms.

H. Intellectual Property

Under no circumstances shall the Terms be construed to provide Buyer license, the right to use, or infringe on any intellectual property of Auxano. Auxano does not warrant that the use or sale of the products hereunder will not infringe the claims of any United States or other patents covering the product itself or the use thereof in combination with other products or the operation of any process.

I. Returns; Complaint

Buyer, upon receipt of any product, shall inspect the goods and notify Auxano in writing within five (5) days after the product has been received by Buyer of any claims for error, damage, or defect, and shall hold the product for Auxano's written instructions. If Buyer does not notify Auxano within five (5) days after the product has been received, such product shall be deemed to conform to the Terms and to have been irrevocably accepted by Buyer. Auxano shall not be responsible for any loss, damage, or penalty as a result of any delay in or failure to manufacture, deliver, or otherwise perform hereunder due to any cause beyond Auxano's reasonable control.

Shall Buyer notice an error in what was delivered, Buyer shall immediately coordinate with Auxano's customer service team to resolve any error in the product(s) shipped. Auxano shall be responsible for any shipping and freight charges associated with returning over or under shipped product.

Shall Buyer notice a defect in the product:

- If Under Warranty:
 - Follow Warranty Section herein.
- If Not Under Warranty:
 - Buyer shall notify Auxano Customer Service to coordinate a return shipment of the product. Auxano shall be responsible for the shipping and freight charges. Upon receipt of the product, Auxano retains a period of ten (10) days to confirm or reject the suspected defect. Shall product be confirmed to be defective, Auxano shall notify Buyer and provide a repair or replacement for the defective product at no additional cost to Buyer. Shall Auxano reject the suspected defect, Auxano shall provide Buyer with (i) a written explanation for the rejection of the suspected defect, (ii) the product returned, and (iii) an invoice to cover the additional shipping and freight charges associated with the re-shipment of the product.

Any complaint regarding any Auxano product shall be directed to Auxano customer service. Auxano customer service shall then coordinate with Buyer to resolve any circumstance with the Buyer related to the purchase of Auxano's product. Auxano's customer service contact information shall be listed below.

No return shall be made after ninety (90) days post shipment date.

J. Miscellaneous



a. Choice of Law; Jurisdiction & Venue

All disputes as to the legality, interpretation, application, or performance of these terms and conditions shall be governed by the laws of the State of Ohio, without regard to conflict of laws provisions. Both Parties agree that venue and jurisdiction for any dispute resolution hereunder shall be solely and exclusively with a court of competent jurisdiction located in Cuyahoga County, Ohio. The Parties hereby expressly disclaim the application of the United Nations Convention on Contracts for the International Sale of Goods.

b. Legal Compliance

Buyer agrees that it shall conduct its business in accordance with all applicable local, national, and international laws and regulations, and with principles of ethical business conduct. This includes, but is not limited to, respecting human rights, prohibiting forced or child labor, ensuring fair labor practices, and upholding environmental protection standards.

c. Force Majeure

Auxano shall not be liable for its failure to perform or a delay in performance of any order due to strike, fire, explosion, flood, riot, lock out, injunction, interruption of transportation, unavoidable accidents, acts of government or public enemy, any act of God, and other causes beyond Auxano's control.

d. Allocation of Product

If Auxano is unable for any reason to supply the total demands for goods specified in Buyer's order, Auxano, at its sole discretion, may allocate its available supply among any or all Buyers on such basis as Auxano deems fair and practical without liability for any failure of performance which may result therefrom.

e. Severability

Whenever possible, each provision of the Terms shall be interpreted in such a manner as to be effective and valid under applicable law. However, in the event that any provision becomes prohibited or invalid under applicable law, or is otherwise held unenforceable, then such provision, upon the mutual agreement of the parties, shall be modified to reflect the parties' intent, consistent with applicable law. The parties shall work together, in good faith, in an effort to agree on appropriate modification within a reasonable period of time. Absent such agreement, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions.

f. Relationship of the Parties

It is expressly understood and agreed by the Parties that nothing contained herein shall be construed to create a joint venture, partnership, association, agency, or other incorporated or unincorporated entity. The Parties' relationship should be contracted at an arm's-length with respect to the subject matter hereof.



g. Assignment

Neither Party shall assign, transfer, or subcontract their obligations under the Terms without the express written consent of the other Party. Upon express written consent, all terms and conditions contained herein shall be binding upon, inure to the benefit of, and be enforceable between the Parties hereto, and their respective heirs, personal representatives, successors and assigns.

h. Notice

Any notice or shipment to Auxano shall be sent as follows:

- For Legal Notice
 - 8006 Katherine Blvd
Brecksville, Ohio 44141
Attn: Auxano Legal
 - Email: legal@auxanomedical.net
- For Customer Service (Returns, Warranty, Shipment, etc.)
 - 7625 Golden Triangle Dr.
Suite G
Eden Prairie, MN 55344
Attn: Auxano Customer Service
 - Email: cs@auxanomedical.net
 - Phone: 440-262-2000
- For Payment (Remit to)
 - P.O. Box 23120
Minneapolis, MN 55423-0120
Attn: Auxano Customer Service

i. Waiver

Auxano's failure to strictly enforce any term or condition stated herein or exercise any right arising hereunder shall not constitute a waiver of Auxano's right to enforce such terms or conditions or exercise such right thereafter. All rights and remedies with regard to any purchase are cumulative and are in addition to any other rights and remedies Seller may have at law or in equity. Any waiver of default by Buyer hereunder shall be in writing and shall not operate as a waiver of any other default or of the same default thereafter.

j. Amendment

Any amendment, modification, or change to these terms and conditions may only be enforceable in a written agreement, signed by both Parties. The said amendment, modification, or change shall explicitly outline what shall be made and placed into effect. Any amendment, modification, or change not made or placed into effect pursuant to this section herein, shall be null and void.

