

STANDARD TERMS OF SALE

1. **General.** All sales by Neurent Medical Inc. (together with its affiliates, “**Neurent Medical**”) of any products of Neurent Medical (“**Products**”) to any purchaser (each, a “**Customer**”) are subject to these terms and conditions of sale (“**Terms of Sale**”), and Neurent Medical expressly rejects any and all of Customer’s additional or different terms and conditions. Neurent Medical’s obligation to sell any Products to Customer is expressly made conditional on Customer’s acceptance of these Terms of Sale, unless otherwise expressly agreed to by Neurent Medical in a writing signed by an authorized officer of Neurent Medical and an authorized officer of Customer.
2. **Quotes and Orders.** Unless otherwise expressly indicated in writing by Neurent Medical, any price for the provision of Products that Neurent Medical quotes to Customer will be valid for thirty (30) days from the date of the quote, subject to material availability and Customer’s credit standing at such time. Neurent Medical reserves the right to reject any order in its sole and absolute discretion. No order shall be deemed accepted unless and until Neurent Medical either provides Customer written notice of acceptance or ships the ordered Products. Prior to acceptance, Neurent Medical will have no liability if it does not supply Products for any reason.
3. **Prices and Taxes.** Prices shown on Neurent Medical invoices are net of discounts provided at the time of purchase and Products listed on an invoice may be subject to rebates or discounts, for which separate documentation is provided by Neurent Medical. Customer must: (a) claim the value of all rebates or discounts in Customer’s fiscal year earned or the immediately following fiscal year; (b) properly report and appropriately reflect discounts and rebates in Medicare/Medicaid cost reports and all claims for payment filed with third party payors as required by law or contract; and (c) provide federal and state agencies access to all information from Neurent Medical concerning discounts and rebates upon request. Prices do not include sales, use, value added, franchise, gross receipts, profits, excise, personal property, withholding or any other federal, state, local or foreign taxes, import or customs fees or duties associated with an order, however designated (collectively, “**Taxes**”). Customer will be liable for all Taxes, whether or not Neurent Medical invoices Customer for such Taxes (unless Customer will provide Neurent Medical at the time an order is submitted with an exemption certificate or other documents acceptable to taxing or customs authorities).
4. **Payment Terms.** All Products are invoiced upon order or shipment. Terms of payment are net thirty (30) days from the date of invoice, unless otherwise expressly stated in writing by Neurent Medical. Notwithstanding any specified payment terms, Neurent Medical may require payment in advance of shipment or ship C.O.D. for any reason, including, but not limited to, if Customer’s credit standing, in Neurent Medical’s sole discretion, warrants it. Neurent Medical may cancel any unfilled portion of a shipment or any new shipment upon Customer’s failure to make any payment when due. Overdue payments shall be subject to a late fee of one and one half percent (1.5%) per month or the maximum interest rate permitted under applicable law, whichever is higher. In no event shall Customer be permitted to set off any payment due in connection with any transaction or any claim or any amount owed by Neurent Medical to Customer in connection with any transaction or otherwise. Neurent Medical may, in its sole discretion, extend credit to Customer in accordance with a credit limit assigned from time to time, and Neurent Medical may modify or discontinue such credit terms and its credit policies at any time. Customer’s total pending orders and outstanding accounts payable to Neurent Medical must remain within the amount of the credit limit. Neurent Medical, in its sole discretion, reserves the right to change terms of payment and/or discontinue further shipments or suspend services, without prejudice to any other lawful remedy, in the event that: (a) a sale would exceed any credit limit that Neurent Medical may, in its sole discretion, extend to Customer; (b) if at any time Neurent Medical determines that Customer’s financial condition or credit rating does not justify a sale on credit; or (c) Customer is at any time in default of any debt or obligation owed to Neurent Medical. Payment must be made to Neurent Medical at the location designated in Neurent Medical’s invoice. In the event Customer defaults in its obligations to Neurent Medical, Customer shall be liable to Neurent Medical for the costs of collection, including, but not limited to, reasonable attorneys’ fees and court costs, and Neurent Medical will not be obligated to make any further deliveries to Customer. Neurent Medical retains a purchase money security interest in the Products sold and to any proceeds from disposition

of such Products until Neurent Medical receives payment in full of the purchase price of the Products and any other charges, and Neurent Medical has the right to file a copy of the applicable invoice with appropriate authorities at any time in order to perfect such security interest. Upon any default by Customer hereunder, Neurent Medical will have any and all rights and remedies of a secured party under the Uniform Commercial Code, which rights will be cumulative. Customer must notify Neurent Medical in writing of any disputed invoice within fifteen (15) days of receipt, which notice must include sufficient detail concerning the basis and amount of the dispute. If Customer does not so dispute an invoice within fifteen (15) days of receipt, such invoice will be deemed to have been approved and accepted by Customer.

5. **Cancellation.** If Customer cancels any order, in whole or in part, Customer will be liable to Neurent Medical for any non-refundable deposits and reasonable cancellation charges that will include, but not be limited to, all costs and expenses incurred by Neurent Medical in connection with procuring and filling Customer's order. Customer acknowledges that if Customer cancels an order that is a special order (i.e., any item that is not "off the shelf") prior to the scheduled shipping date, notwithstanding any other provisions of these Terms of Sale, such cancellation is subject to a cancellation fee of one hundred percent (100%) of the purchase price. All other orders cancelled less than one (1) week prior to the scheduled shipping date are subject to a twenty percent (20%) cancellation charge in addition to any other charges in accordance with the first sentence of this Section.

6. **Delivery, Title, Risk of Loss and Acceptance.** All delivery dates are estimates. Neurent Medical will use commercially reasonable efforts to meet requested delivery dates, but Neurent Medical will not be liable to Customer in any way for any late or partial shipment. The Products will be delivered FCA (Neurent Medical's facilities, which as used in these Terms of Sale shall be deemed to include the facilities of any third party used by Neurent Medical for order fulfilment). Customer is responsible for the cost of freight, fees, Taxes, duties, and all shipping and handling costs in connection with the Products, which may be added to the invoice. Neurent Medical reserves the right to ship items in a single or in multiple shipments. Title to and risk of loss of Products shall pass to Customer when the Products are provided to a common carrier at Neurent Medical's facility, subject to Neurent Medical's security interest retained hereunder. Neurent Medical will have no liability whatsoever for damage, loss, or deterioration of the Products after delivery of the Products to a carrier, regardless of whether Neurent Medical charges Customer for freight. Customer acknowledges that all claims for losses caused by a carrier, including those for inconvenience, delay or expense, will only be made against such carrier, and in no event will Customer deduct any amount for any such losses from amounts due to Neurent Medical. In no case does the purchase price, even if inclusive of freight, cover the cost of any insurance. Notwithstanding the foregoing, Neurent Medical may in certain circumstances at its sole option, procure insurance which amount Customer shall reimburse to Neurent Medical. Products will be shipped to the address indicated in Customer's order. Neurent Medical may refuse to ship Products to a third party. Customer shall be deemed to have accepted the Products upon receipt, subject to the limited warranty contained herein.

7. **Loaned Products.** If any Products, including, but not limited to, generator consoles and/or accessories, are loaned to Customer, the additional terms and conditions set forth in [Appendix 1](#) hereto will apply, in addition to any other documentation under which any such loaned Products are provided to Customer.

8. **Use of Products.** Customer shall use the Products strictly in accordance with all applicable local, state and federal laws, regulations and guidelines and any labelling, instructions for use, manuals and all Neurent Medical safety precautions accompanying or concerning the Products.

9. **Single-Use Products.** Customer shall ensure that units of any Single-Use Product that it purchases are used once and only once in delivering patient care and Neurent Medical conveys no right in such Single-Use Product other than the right to use those units once and only once. A "**Single-Use Product**" means any Product that is labeled "For Single Use" or "Single Use Only" or "Do Not Reuse" or otherwise labeled to indicate that the Product is to be used once and only once in delivering patient care. Neurent Medical does not grant Customer or any other person or entity any license to reprocess, remanufacture, or reconstruct any Single-Use Product.

10. **Indemnification.** Customer shall indemnify and hold harmless Neurent Medical, its affiliates and each of their respective directors, officers, employees, contractors, agents and representatives (the "**Indemnified Parties**") from all claims, demands, actions, losses and damages of any kind whatsoever (including, but not limited to, attorney's fees

and costs) (collectively “**Losses**”) suffered or incurred by any of the Indemnified Parties for any claim arising out of or relating to Customer’s handling, storage or use of any Product, provided, however, that this indemnity shall not apply to the extent that any such Product when supplied by Neurent Medical hereunder did not comply with the warranty contained in [Section 11](#). The rights and obligations relating to indemnification for any Losses relating to a Product are expressly defined only by these Terms of Sale. Customer shall have no rights or obligations to a defense against any claim relating to the Products, except as set forth in these Terms of Sale.

11. Limited Warranty.

- a. **Warranty.** Neurent Medical warrants to Customer that the Products will be free from defects in material and workmanship until the expiration date indicated on the Product’s packaging (the “**Warranty Period**”). This warranty shall apply only to the original end-user Customer of Products who purchased the Products directly from Neurent Medical or any of its authorized distributors. This warranty may not be transferred or assigned without the express prior written consent of Neurent Medical.
- b. **Limitations.** Neurent Medical’s warranty shall not apply to (i) Products that have been misused, neglected, modified, altered, adjusted, tampered with, improperly installed or refurbished, (ii) Products that have been repaired by any person other than Neurent Medical personnel without the prior written consent of Neurent Medical, (iii) Products that have been subjected to unusual stress or have not been stored or maintained in their original packaging in accordance with the instructions for use, the user manual or as demonstrated by a Neurent Medical representative, (iv) Products from which any original serial numbers or other identification marks have been removed or destroyed, or (v) Products that have been repaired with any unauthorized or non-Neurent Medical components. In addition, in order to ensure safe operation of Neurent Medical Products, only Neurent Medical generator consoles and accessories may be used. Neurent Medical reserves the right to invalidate any product warranties and complimentary loaner programs if Neurent Medical Products are used with generator consoles or accessories not manufactured or authorized by Neurent Medical or if repairs are performed by any party other than authorized Neurent Medical repair personnel. In all cases, Neurent Medical has sole responsibility and discretion for determining the cause and nature of a Product defect, and Neurent Medical’s determination with regard thereto shall be final.
- c. **Remedies.** If a valid warranty claim is received within the Warranty Period, Neurent Medical will, in its sole discretion: (i) repair the Product at no charge; (ii) replace the Product at no charge with a Product that is at least functionally equivalent to the original Product; or (iii) refund the purchase price of the Product. In any event, Neurent Medical’s sole obligation to Customer, and Customer’s exclusive remedy will be limited to the replacement value of the defective or non-conforming Product, part or component. No agent, representative, employee of Neurent Medical or any third party has any authority to make any representations or warranties other than those set forth in this Section.
- d. **Disclaimers.** Neurent Medical has no control over the operation, inspection, storage, maintenance or use of the Products after delivery to Customer and Customer’s selection of patients with which it uses the Products. ACCORDINGLY, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE EXPRESS WARRANTIES IN THIS SECTION ARE THE ONLY WARRANTIES APPLICABLE TO THE PRODUCTS SOLD TO CUSTOMER AND ARE MADE IN LIEU OF ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY, NONINFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE, EACH OF WHICH NEURENT MEDICAL HEREBY DISCLAIMS. IN NO INSTANCE WILL NEURENT MEDICAL BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL, COVER, EXEMPLARY, MULTIPLIED OR CONSEQUENTIAL DAMAGES OR ATTORNEYS’ FEES OR COSTS. Customer assumes all liability, whether based on warranty, contract, negligence, or otherwise, for damages resulting from handling, possession or use of the Products.

12. Returns. Returns of Products other than returns of defective Products covered by the warranty in [Section 11](#) are not permitted. When returning defective Products covered by the warranty in [Section 11](#), Customer shall comply with Neurent Medical’s then current Product Return Authorization procedure. Any request for return authorization

must include the order number and reasons for return. Neurent Medical will pay all shipping and handling costs on Products covered by the warranty in [Section 11](#).

13. **Limitation of Liability.** NEURENT MEDICAL'S LIABILITY TO CUSTOMER OR ANY THIRD PARTY ARISING OUT, RELATED TO OR IN CONNECTION WITH OR UNDER THESE TERMS OF SALE OR THE USE OR INABILITY TO USE THE PRODUCTS, WHETHER UNDER A THEORY OF BREACH OF CONTRACT, TORT, MISREPRESENTATION, FRAUD, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER THEORY OF LAW, WILL NOT EXCEED THE ACTUAL PURCHASE PRICE PAID BY CUSTOMER FOR THE APPLICABLE PRODUCTS MINUS DEPRECIATION, OR IN THE CASE OF SERVICES, SERVICE FEES PAID BY CUSTOMER IN THE SIX (6) MONTH PERIOD IMMEDIATELY PRECEDING THE CLAIM. CUSTOMER WILL NOT BE ENTITLED TO, NOR WILL NEURENT MEDICAL BE LIABLE FOR, INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL, COVER, EXEMPLARY, MULTIPLIED OR CONSEQUENTIAL DAMAGES OF ANY NATURE, INCLUDING, BUT NOT LIMITED TO, LOSS OF BUSINESS, PROFITS OR REVENUE OR BUSINESS INTERRUPTION, EVEN IF NEURENT MEDICAL WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

14. **Proprietary Information and Confidentiality.** Customer agrees to preserve and protect any information and materials made available to Customer hereunder and will not use, disclose, copy or reproduce such information or materials except as expressly authorized in writing by Neurent Medical. Upon Neurent Medical's request Customer will return to Neurent Medical all documents containing such information and materials and retain no copies thereof. Without limiting the foregoing, Customer: (a) will hold in strict confidence Product pricing, quotes, invoices and any information and materials which are related to the business or Products of Neurent Medical or are designated as proprietary or confidential, herein or otherwise, or which a reasonable person would consider to be proprietary, non-public or confidential information; (b) hereby covenants that, subject to [Section 3](#), Customer will not disclose such information to any third party without prior written authorization of Neurent Medical; and (c) agrees that any breach or threatened breach of this Section may cause irreparable harm, that a remedy at law will be inadequate to remedy such a breach or threatened breach, and that Neurent Medical may enforce this Section in any court of competent jurisdiction by way of a temporary or permanent restraining order or injunction, without the necessity of posting a bond, in addition to any other available legal remedies that it may have.

15. **Force Majeure.** If Neurent Medical is not able to deliver Products to Customer by a requested delivery date because of anything that is beyond Neurent Medical's reasonable control (such as act of God, casualty, strike or labor disruption, pandemic, accidents or unavailability of or delays in supplies or transportation), then the estimated delivery time will be extended accordingly, and under no circumstances will Neurent Medical be liable to Customer or any third party for any damages that may result from such or any other delay in delivery.

16. **Compliance with Laws and No Resale.** Customer represents and warrants that it: (a) will comply with all applicable laws and regulations of the United States and the States of the United States in the use of the Products; and (b) is buying Product(s) for its internal use only, and not for resale or export. The parties agree that the purchase of Products is not intended to violate the Anti-Kickback Statute, 42 U.S.C. 1320(a)-7b(b). Customer represents and warrants that neither it nor any of its affiliates, officers, directors, employees, contractors, agents or representatives have ever been debarred, excluded, or suspended by the Office of Inspector General of the Department of Health and Human Services, otherwise deemed ineligible to participate in federal healthcare or procurement programs, or, to the extent applicable, state healthcare or procurement programs, or convicted of a criminal offense with respect to health care reimbursement.

17. **Changes.** Neurent Medical reserves the right at any time, without notice, to make changes in design or additions to, or improvements in its Products without liability or obligation to install such change, addition, or improvement in any Product manufactured prior thereto or to replace any Product ordered or delivered prior thereto. Neurent Medical reserves the right to discontinue or withdraw any Products without notice.

18. **Governing Law.** These Terms of Sale will be governed by and construed in accordance with the laws of the State of Texas as applicable to contracts made and to be performed in that state, without regard to conflicts of laws principles. The United Nations Convention on Contracts for the International Sale of Goods will not apply to these Terms of Sale.

19. **Arbitration.** Any dispute arising out of or in connection with these Terms of Sale or their validity shall be submitted to the American Arbitration Association and finally settled in accordance with its rules then in force. The number of arbitrators shall be one (1). Both parties shall be bound by the arbitrator's decision, and judgment upon such decision may be entered in any federal or state court in the State of Texas and in any other court having jurisdiction over the parties or their assets. The place of arbitration shall be Austin, Texas. The arbitrator shall apply the law chosen under Section 18 hereof. Neurent Medical retains the right to apply to any court of competent jurisdiction for provisional and/or conservatory relief, including, without limitation, pre-arbitral attachments or injunctions, and any such request shall not be deemed incompatible with the agreement to arbitrate or a waiver of the right to arbitrate.

20. **Entire Agreement.** These Terms of Sale, as Neurent Medical may modify them from time to time, constitute the entire agreement between Neurent Medical and Customer with respect to the provision of Products, and supersede all prior or contemporaneous understandings, written or oral. Any such modification shall not affect any accepted order. No modification shall be effected by the acknowledgement or acceptance of any Customer order or other document containing other or different terms or conditions whether or not signed by any representative of Neurent Medical.

21. **Waiver.** No purported waiver of any provision of these Terms of Sale, or of any breach thereof, shall be deemed to be a waiver of such provision or breach unless such waiver is in writing and signed by an authorized representative of Neurent Medical. No such waiver shall be deemed to be a subsequent waiver to such provision or waiver of any subsequent breach of the same or any other provision hereof, and Neurent Medical's acceptance of subsequent orders or continued dealing with Customer following a breach of any provision hereof by Customer shall not be deemed a waiver of such or any other breach. No course of dealing between Neurent Medical and Customer or any delay on the part of Neurent Medical in exercising any rights hereunder and no failure or delay by Neurent Medical in enforcing or partially enforcing any provision of these Terms of Sale shall operate as a waiver of any of its rights under these Terms of Sale.

22. **Conflicts.** These Terms of Sale are in lieu of and replace any and all terms and conditions set forth in any documents issued by Customer. Any additional, different, or conflicting terms and conditions on any such document issued by Customer at any time are hereby rejected by Neurent Medical and will not be binding in any way on Neurent Medical.

23. **Assignment.** Customer will not transfer or assign any or all of its rights or interests, or delegate any of its obligations, hereunder, without the prior written consent of Neurent Medical. Neurent Medical may assign its rights or interests, or delegate its obligations, in whole or in part, to any of its affiliates or any third party without the prior consent of Customer. Subject to the foregoing, these Terms of Sale will be binding upon, inure to the benefit of, and be enforceable by permitted successors and assigns of the parties.

24. **No Third Party Beneficiaries.** The rights and remedies conferred under these Terms of Sale apply only to Neurent Medical and Customer, and, except as expressly set forth herein, will not be construed to inure to the benefit of or provide any right of action to any other person, including, but not limited to, any patient or third-party payor.

25. **Severability.** In the event and to the extent that any provision of these Terms of Sale is determined to be unenforceable or invalid, such provision will be enforced to the fullest extent permitted by applicable law, and such determination will not affect the validity and enforceability of any other remaining provisions.

APPENDIX 1

ADDITIONAL TERMS AND CONDITIONS CONCERNING LOANED PRODUCTS ("Additional Loaned Product Terms")

1. **Loaned Products.** Neurent Medical may provide one or more of its generator consoles and certain related accessories (collectively, "**Generator Consoles**") to Customer subject to the following terms:
 - a. The quantity of Generator Consoles will be as mutually agreed to by Customer and Neurent Medical;
 - b. The Generator Console provided is restricted for use with the Products only and is not separately reimbursable and has no independent value; and
 - c. Customer's use, storage and maintenance of the Generator Consoles is subject to the terms and conditions of a Capital Equipment Acknowledgement Form (as it may be modified by Neurent Medical from time to time, the "**Form**", the current version of which is substantially as set forth in Schedule A attached hereto) provided to Customer to be signed by Customer and returned to Neurent Medical, provided, however, that if Customer does not sign and return the Form to Neurent Medical, but accepts the relevant Generator Consoles provided pursuant to the terms of the Form, the terms of the Form are hereby incorporated in these Terms of Sale as if fully set forth herein and, together with the provisions of the Terms of Sale, as applicable, shall govern the use, storage and maintenance of the Generator Consoles. In the event of a conflict between any provision of the Terms of Sale and any provision contained in these Additional Loaned Product Terms, the conflicting provision of the latter shall prevail with respect to the rights and obligations of the parties with respect to any Generator Consoles provided to Customer.

SCHEDULE A

CAPITAL EQUIPMENT PLACEMENT ACKNOWLEDGEMENT ("Acknowledgement")

Customer acknowledges to Neurent Medical Inc. ("Neurent"), with an address at 14425 Falcon Head Blvd, Building E, Austin, Texas 78738, that it has requested Neurent to provide to Customer the equipment as set forth herein, and Neurent agrees to provide such equipment subject to Customer's agreement to the following terms and conditions:

1. Equipment

Neurent will provide to Customer the capital equipment and accessories listed in the table set forth in Schedule 1 (the "Equipment"), solely for Customer's use in performing medical procedures with Neuromark™ Devices as part of the Neuromark™ System, in accordance with the applicable FDA approved indications for use ("Neurent Medical Procedure(s)"). The Equipment is not separately reimbursable and has no independent value. Within a reasonable time following receipt and, in any event, prior to use of the Equipment, Customer will inspect the Equipment to confirm its good working order and condition, and if Customer determines that the Equipment is not in good working order or condition, Customer will not use the Equipment and promptly contact Neurent to arrange for repair or replacement.

2. Title

Neurent owns the Equipment and all right, title and interest to the Equipment will remain with Neurent at all times. Customer shall have no right or interest in the Equipment whatsoever and Customer shall not remove from the Equipment any label or other indication on the Equipment that the Equipment is owned exclusively by Neurent.

3. Location, Use and Inspection of Equipment

Customer agrees that

- i) it will store and use the Equipment in Customer's facility at which it uses it for Neurent Medical Procedures, and it is responsible for protecting the Equipment against loss or damage as it would its own property of similar nature, and, in any event, with no less than a reasonable degree of care;
- ii) it will use and maintain the Equipment solely for on-label use in Neurent Medical Procedures in a proper manner with appropriate care, pursuant to the instructions for use, training, manuals and other documentation that Neurent may provide to Customer; Neurent will not be responsible for any loss, damage or injury resulting from the use of the Equipment contrary to the preceding sentence or any of the other provisions of this Acknowledgement;
- iii) in case of a malfunction or defect of the Equipment, it will make no further use of the Equipment and promptly contact Neurent for repair or replacement;
- iv) it will not move the Equipment from the facility to which it was delivered without Neurent's prior written consent;
- v) it will permit Neurent and its representatives to inspect the Equipment during regular business hours; and
- vi) upon termination, or at any other time upon Neurent's request, it will make no further use of the Equipment and promptly return it to Neurent at Customer's expense, properly packaged to protect it from loss, damage or destruction, substantially in the same condition as when delivered (ordinary wear and tear excepted).

4. Termination

Customer may terminate this Acknowledgement at any time for any or no reason on prior written notice to Neurent with immediate effect. Neurent may terminate this Acknowledgement at any time for any or no reason on ten (10) days' prior written notice to Customer, provided that if the Equipment is used in any manner other than in accordance with the terms of this Acknowledgement, Neurent may terminate this Acknowledgement upon written notice with immediate effect.

**Schedule 1
to
Capital Equipment Placement Acknowledgement
Equipment**

Item	Quantity
Neuromark™ RF Generator Console	
Connector cable	
Stand	
Basket	
Other	

Customer Name: _____

Customer Contact: _____

Customer Address: _____

Customer Telephone: _____

Customer E-mail: _____

Date Shipped: _____

Date Returned: _____