



## **EQUIPMENT PURCHASE AGREEMENT (181010)**

- 1. ITEMS PURCHASED.** Seller (AVACEN Medical) with its principal address at 9835 Carroll Centre Rd #104, San Diego, CA 92126 agrees to sell and Buyer agrees to buy, an AVACEN 100 heat therapy device (the "Goods") in accordance with the terms and conditions of this Agreement.
- 2. PAYMENT.** Buyer shall pay the amount indicated on the AVACEN Medical webpage.
- 3. CREDIT CARD CHARGE DISPUTES.** Buyer acknowledges that Seller is accepting a credit card as payment for Goods as a convenience to Buyer. Should the Buyer desire to not enter into this agreement, Seller is willing to accept personal and business checks, wire transfers and cash as alternate forms of payments. Buyer also understands that a key asset of Seller is its relationship with its Credit Card Processors such as MasterCard, Visa, American Express and Discover Card. Furthermore, Buyer realizes that the disruption of that relationship by Buyer filing a credit card dispute related to their Product purchase with the Credit Card Processor may cause irreparable damage to Seller. Therefore, those Buyers who purchase via credit card understand that as a fair and equitable alternative to any conflict of payment, as it relates to Goods purchased via credit card under this agreement, is subject to the ARBITRATION section below.
- 4. DELIVERY.** Seller shall use best efforts to ship the Goods within 5 business days after Buyer's payment to such address as specified by Buyer.
- 5. PAYMENT OF TAXES.** Buyer agrees to pay all taxes of every description including, but not limited to, federal, state, municipal and VAT that arise as a direct result of this Agreement excluding those related to Sellers income taxes.
- 6. WARRANTIES.** Please refer to the **Warranty** associated with your purchase.
- 7. INSPECTION.** The Buyer, upon receiving possession of the Goods, shall have 3 days to inspect the Goods to determine if the Goods conform to the requirements of this Agreement. If the Buyer, in good faith, determines that all or a portion of the Goods are non-conforming, the Buyer may return the Goods to the Seller. The Buyer must provide written notice to the Seller of the reason for rejecting the Goods. The Seller will have 15 business days from the Buyers Notice to remedy such defects or refund Buyer all monies paid hereunder including the costs of return ground shipping to Seller.
- 8. REFUND.** Please refer to the **Satisfaction Guarantee Return Policy** associated with your purchase.
- 9. DEFAULT.** Failure to make a required payment due hereunder or the dispute of any payments made hereunder by Buyer shall constitute a material default under this Agreement and Buyer agrees to immediately return the Goods to Seller at Buyers expense.
- 10. REMEDIES ON DEFAULT.** In addition to any and all other rights available according to law, if either party defaults by failing to substantially perform any material provision, term or condition of this Agreement, the other party may elect to cancel this Agreement if the default is not cured within 15 business days after providing written notice to the defaulting party.
- 11. FORCE MAJEURE.** If the performance of this Agreement or any obligation under this Agreement is prevented, restricted, or interfered with by causes beyond either party's reasonable control, ("Force Majeure"), and if the party unable to carry out its obligations gives the other party prompt written notice of such event, then the obligations of the party invoking this provision shall be suspended to the extent necessary by such event. The term Force Majeure shall include, without limitations, acts of God, fire, explosion, vandalism, storm, or other similar occurrence, orders or acts of military or civil authority, or by national emergencies, insurrections, riots, or wars, or supplier failures.

**12. LIABILITY AND INDEMNITY.** Liability for injury, disability, or death of Buyer and other persons caused by operating, handling, or transporting the Goods after Delivery to Buyer is the obligation of the Buyer, and the Buyer shall indemnify and hold the Seller harmless from and against all such liability.

**13. ARBITRATION.** Any controversies or disputes arising out of or relating to this Agreement shall be resolved by binding arbitration conducted by a professional arbitrator at San Diego, CA in accordance with the then-current Commercial Arbitration rules of the American Arbitration Association.

**14. NOTICES.** Any notice of communication required or permitted under this Agreement shall be sufficiently given if delivered in person or by tracked delivery service to Seller's address above or to Buyer's address as specified in Buyer's online order, or to such other address as one party may have furnished to the other in writing.

**15. ASSIGNMENT.** Buyer may not assign or transfer this Agreement, including Warranties, without prior written consent of the Seller, which consent shall not be unreasonably withheld.

**16. ENTIRE AGREEMENT.** This Agreement contains the entire agreement of the parties regarding the subject matter of this Agreement, and there are no other promises or conditions in any other agreement whether oral or written.

**17. AMENDMENT.** This Agreement may be modified or amended only if the amendment is made in writing and signed by both parties.

**18. SEVERABILITY.** If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable.

**19. WAIVER OF CONTRACTUAL RIGHT.** The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.

**20. APPLICABLE LAW.** This Agreement shall be governed by the laws of the State of California.