

# AVANOS



5405 Windward Pkwy  
Alpharetta, GA 30004

T 1-267-753-6700  
[www.orthogenrx.com](http://www.orthogenrx.com)

## OrthogenRx Terms and Conditions TriVisc / GenVisc 850

### **CREDIT & PURCHASE TERMS ENTIRE AGREEMENT**

By purchasing products and/or services from OrthogenRx, Inc., its subsidiaries and/or affiliates, *and successors in interest*, as may be applicable (collectively known herein as "OrthogenRx"), Purchaser (know herein as "Customer") agrees to be bound by and accepts these terms and conditions (known herein as "Agreement").

If Customer has signed a formal written agreement with OrthogenRx governing purchases, that written agreement shall govern purchases, including purchases from our secure website(s) (known herein as "Portal"), except as otherwise provided for in any such agreement. In the absence of such an agreement or in the event such agreement is silent as to a particular term or condition, the terms and conditions contained in this Agreement shall control and apply to all purchases, including, but not limited to, online purchases from the Portal.

This Agreement may NOT be altered, supplemented, or amended by the Customer by use of any documents(s). Any attempt to alter, supplement, or amend this Agreement, or to enter an order for product(s) which is (are) subject to additional or altered terms and conditions, will be null and void, unless otherwise agreed to in writing and signed by Customer and OrthogenRx. This Agreement does not supersede, waive, or otherwise affect any security agreements, guarantees, credit applications or other agreements between Customer and OrthogenRx, none of which may be amended except by written agreement signed by both parties.

Customer acknowledges and agrees that OrthogenRx reserves the right to amend this Agreement at its sole discretion as it sees fit from time to time.

### **PRICE POLICY**

Prices are subject to change by OrthogenRx without notice to Customer or any other person or entity.

Any additional costs incurred by OrthogenRx in connection with or arising out of the manufacture, sale, or distribution of product, including, but not limited to, increases in labor, freight and materials cost before shipment of order and applicable overhead, may be invoiced to Customer and Customer agrees to pay same. Premium time as required by Customer will be invoiced as an extra item. Customer will pay all state, federal, or local taxes when due; this includes sales, use, excise, gross receipts, value-added taxes or other surcharges or assessments that OrthogenRx is at any time obligated to pay or collect based on or in any way levied on, the sale of products and/or services, or the products or any services related thereto. Additionally, Customer agrees and is obligated to pay all interest or penalties assessed by OrthogenRx due to failure to comply with the obligations contained herein. Further, Customer agrees and is obligated to reimburse OrthogenRx promptly any amounts OrthogenRx pays on behalf of Customer that are Customer's obligation.

## **PRICING ERRORS**

Pricing errors may occur on the Portal from time to time, on items sold by OrthogenRx, or items sold by third-party sellers. OrthogenRx attempts to correct all pricing errors promptly after discovery or after OrthogenRx receives notice of an error. OrthogenRx reserves the right to cancel any orders containing pricing errors, with no further obligation to Customer, even after receipt of an order confirmation or shipping notice from OrthogenRx. Any payments Customer makes to OrthogenRx for orders that are cancelled due to pricing errors will be refunded.

## **PAYMENT TERMS**

All payments shall be made in full, in good funds, and in accordance with the payment terms on your invoice, via ACH direct debit, check, credit card or other payment forms acceptable to OrthogenRx.

Until product is paid for in full, OrthogenRx retains, and Customer hereby grants to OrthogenRx, a security interest in the ordered product. OrthogenRx may assess a service charge calculated at the rate of 1.5% per month (or the maximum rate allowed by law, if such rate is less than 1.5% per month) on any amount not paid to OrthogenRx when due. Failure or delay by OrthogenRx to invoice Customer for any such service charge will not waive OrthogenRx right to receive the same.

In the event of default in payments on any invoices, OrthogenRx shall have the right to declare all invoices immediately due and payable. Customer agrees to pay all out of pocket expenses, including attorneys' fees and costs, incurred by OrthogenRx, Inc. to collect any amounts due from Customer or to otherwise enforce any of the terms stated herein. OrthogenRx (including its affiliates, subsidiaries, parent, or related entities, individually or collectively) may exercise a right of set-off against all amounts due to Customer.

OrthogenRx shall be deemed a single creditor for purposes of this section.

## **SHIPMENT & DELIVERY**

Orders are not binding upon OrthogenRx until accepted by OrthogenRx. OrthogenRx reserves the right to refuse service to anyone.

OrthogenRx will indicate its acceptance of an order by issuing an invoice or by shipping the ordered product to Customer. All shipments are made F.O.B. destination unless otherwise specified. In the absence of specific instructions, OrthogenRx selects the carrier. Title to products and risk of loss pass to Customer upon delivery thereof by OrthogenRx to the carrier or delivery service. Customer assumes all risk of loss in shipping and all liability for loss or damages, whether direct, indirect, consequential, or otherwise, due to delays once the products have been delivered to the carrier.

## **CONTINGENCIES**

OrthogenRx shall be excused from its obligations hereunder in whole or in part to the extent its performance is delayed or prevented by strikes, work stoppages or disputes, fires, floods, war (declared or undeclared), pandemics, epidemics, riots, loss or destruction of product, non-availability or delays of transportation, embargoes, accidents, delay or failure of OrthogenRx suppliers to make delivery of material, shortages of material or labor, restrictions, limitations, obligations, taxes, assessments, duty or fee imposed by any government or governmental authority, domestic or foreign, or any other cause beyond OrthogenRx control. In such circumstances OrthogenRx obligations hereunder shall be suspended for so long as any such contingency continues, and Customer agrees to extend, and are deemed to extend, for a corresponding period, any letters of credit or trade acceptance opened by Customer in respect to such shipment or delivery, provided, however, that if any shipment or delivery hereunder shall be so prevented for more than one hundred eighty (180) days. In such an event, either OrthogenRx or Customer shall have the right to cancel only the effected/specific shipment or delivery on a contract by providing written notice to the other of intent to cancel 180+ day delayed shipment/delivery. OrthogenRx shall be excused from its obligations hereunder in whole or in part to the extent its performance is delayed or prevented by strikes, work stoppages or disputes, fires, floods, war (declared or undeclared), pandemics, epidemics, riots, loss or destruction of product, non-availability or delays of transportation, embargoes, accidents, delay or failure of OrthogenRx suppliers to make delivery of material, shortages of material or labor, restrictions, limitations, obligations, taxes, assessments, duty or fee imposed by any government or governmental authority, domestic or foreign, or any other cause beyond OrthogenRx control.

In such circumstances OrthogenRx obligations hereunder shall be suspended for so long as any such contingency continues, and Customer agrees to extend, and are deemed to extend, for a corresponding period, any letters of credit or trade acceptance opened by Customer in respect to such shipment or delivery, provided, however, that if any shipment or delivery hereunder shall be so prevented for more than one hundred eighty (180) days. In such an event, either OrthogenRx or Customer shall have the right to cancel only the effected/specific shipment or delivery on a contract by providing written notice to the other of intent to cancel 180+ day delayed shipment/delivery.

## **RETURN POLICY**

Client agrees return requests will be handled in accordance with, and shall be subject to, OrthogenRx, Inc.'s applicable then current RETURN POLICY – Addendum A to this Agreement. Customer acknowledges and agrees that the remedies set forth in the RETURN POLICY are Customer's exclusive remedies with respect to any products eligible for return as described in the RETURN POLICY. Except as set forth in the RETURN POLICY, all sales of products to Customer are made on a one-way basis and Customer has no right to return products purchased under this Agreement to OrthogenRx.

## USE OF PRODUCTS

Customer warrants that they have all required governmental licenses, permits and approvals required to purchase, use and/or store products Customer purchases from OrthogenRx and that all purchases from OrthogenRx are for "own use" as such term is defined in judicial or legislative interpretation. OrthogenRx may immediately terminate Customer's ability to make purchases if OrthogenRx determines that Customer or any facility owned, operated, or managed by Customer, directly or indirectly, has breached this "own use" limitation.

- Customer will comply with all laws, rules, and regulations applicable to products purchased hereunder.
- **Customer represents and warrants that it is purchasing product(s) for its own account and not for resale.**

## WARRANTY

ORTHOGENRX MAKES NO WARRANTY WHATSOEVER (WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE) WITH RESPECT TO THE PRODUCTS, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (c) WARRANTY OF TITLE; OR (d) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY, EXCEPT AS MAY BE PROVIDED IN THE DOCUMENTATION PROVIDED WITH THE PRODUCTS.

## LIMITATION OF LIABILITY

IN NO EVENT SHALL ORTHOGENRX, INC. BE LIABLE, WHETHER IN CONTRACT, TORT OR OTHERWISE, FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES OR LOSSES OF ANY NATURE OR FOR LOST REVENUE, LOST PROFITS OR LOST BUSINESS ARISING OUT OF PURCHASES FROM ORTHOGENRX, THE USE OF THE PRODUCTS, OR ORTHOGENRX'S FAILURE TO DELIVER ORDERED PRODUCTS. IN NO EVENT SHALL ORTHOGENRX'S LIABILITY FOR ANY ORDER OR PRODUCT UNDER THIS AGREEMENT EXCEED THE FEES ACTUALLY PAID BY CUSTOMER FOR SUCH ORDER OR PRODUCT. ORTHOGENRX'S SOLE OBLIGATION AND YOUR EXCLUSIVE REMEDY FOR BREACH HEREUNDER WILL BE, AT ORTHOGENRX, INC.'S OPTION, TO REPAIR OR REPLACE THE PRODUCT.

## DISCOUNT DISCLOSURE

If Customer receives any "discounts or other reductions in price" under Section 1128B(b)(3)(a) of the Social Security Act (42 U.S.C.1320- 7b(b)(3)(a)) from OrthogenRx, Customer may be required to disclose the discounts or reductions in price under any state or federal program which provides cost or charge-based reimbursement to Customer for the products or services Customer buys from OrthogenRx, or as otherwise requested or required by any governmental agency.

## **INTELLECTUAL PROPERTY OWNERSHIP**

Customer acknowledges and agrees that OrthogenRx is, and will remain, the sole and exclusive owner of all intellectual property rights in and to each product made available to Customer and any related specifications, instructions, documentation, or other materials, including, but not limited to, all related copyrights, patents, and trademarks and other intellectual property rights. Customer does not, and will not, have or acquire any ownership of these intellectual property rights in or to the products made available to Customer or of any intellectual property rights relating to those products.

## **MISCELLANEOUS**

This Agreement, including all communications and disputes arising from it, shall be construed, and enforced in accordance with the laws of the State of Pennsylvania without regard to or application of conflict of law principles. Any legal suit, action or proceeding arising out of or relating to this Agreement shall be instituted in the federal courts of the United States of America or the courts of the Commonwealth of Pennsylvania, in each case located in the City of Philadelphia and County of Philadelphia, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding. No rights arising out of this Agreement may be assigned by Customer without the express written consent of OrthogenRx. No waiver by OrthogenRx of any default or failure by OrthogenRx to enforce a right hereunder shall be deemed a waiver of any right or prior or subsequent default. Customer agrees that all information on the Portal, this Agreement, and the purchase terms, including, but not limited to, price, are confidential and may not be disclosed to third parties. Whenever possible, each provision of this Agreement shall be interpreted in a manner as to be effective under applicable laws; but, if any provision in this Agreement shall be prohibited by or invalidated under applicable law, such provision shall be ineffective to the extent of the prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

## **CREDIT TERMS & LIMITS**

OrthogenRx may at any time, at its sole discretion, limit the amount of credit extended to Customer. If OrthogenRx deems limiting the credit amount advisable for credit reasons, OrthogenRx may cancel any open orders of all undelivered product and, until such time as Customer's account is brought under any new credit limit, reject any new orders of product. Customer hereby represents and warrants that Customer is solvent and agrees that such representation and warranty shall be deemed repeated upon each order and/or delivery hereunder.

## **ELECTRONIC TRANSMISSION AGREEMENT**

OrthogenRx and Customer agree to the use of electronic transmission, including but not limited to e-mail or other transmissions via the Internet or World Wide Web, in entering into and in exercising their rights and performing their obligations under this Agreement, that such use of electronic transmission is in the best interests of all parties under this Agreement, and shall be permissible hereunder, notwithstanding any requirement of the Uniform Commercial Code or any other applicable law that might otherwise be considered unsatisfied as a result of the utilization of such media.

## **ELECTRONIC TRANSMISSION AGREEMENT (cont'd)**

OrthogenRx and the Customer therefore agree that the Uniform Electronic Transactions Act, as promulgated by the National Conference of Commissions on Uniform State Laws, shall be applicable to the construction of this Agreement and any transactions hereunder, whether or not such Act shall have been adopted in any jurisdiction. This includes, but is not limited to, the following:

- A. Any document (including this Agreement) transmitted electronically shall be treated as an original signed document in all respects.
- B. Electronically submitted signatures of any Party shall be considered for these purposes as an original signature.
- C. Any electronic transmission shall be considered to have the same legal binding effect as an original document.
- D. Neither Party shall raise the use of electronic transmission as a defense to this Agreement or in matters relating to any transaction pursuant to this Agreement and each Party waives such defense.