



SHIPPING AGREEMENT

1. SCOPE OF AGREEMENT

This Shipping Agreement (“Agreement”) sets forth the terms by which Xytex Tissue Services, Inc. (“Xytex”) agrees to ship cryogenically frozen human tissue (“Specimens”) to the undersigned individual (“Client”) or Client’s healthcare provider. Client hereby agrees to be bound by the terms of this Agreement.

2. SHIPPING TERMS AND CONDITIONS

Dewar Return/Late Fees: Xytex ships Specimens in cryogenic storage dewars (“Dewar”). The packaging for each Dewar contains a pre-paid return label and shipping instructions. The box the Dewar arrives in serves as the return shipping container. Client acknowledges and agrees Client is responsible for ensuring the return of each empty Dewar. Dewars not returned to Xytex within eight (8) days from the Ship Date listed hereinabove will incur a late return fee of \$40.00 per day. An additional fee of \$850.00 will be charged for each Dewar which is lost or not returned to Xytex within thirty (30) days of the Ship Date. Xytex reserves the right to apply any Client deposit against outstanding late fees. Client is responsible for informing Client’s healthcare provider of Xytex’s Dewar return and late fee policies.

Dewar Warranty: Xytex warrants its Dewars will remain suitable for the transport of cryopreserved Specimens for a period of seven (7) days starting with the Ship Date so long as the seal on the Dewar remains unopened. Client acknowledges and agrees Xytex is not responsible for damages to Client’s Specimens resulting from the negligence of any transportation carrier once the Dewar leaves a Xytex facility.

No Specimen Storage: Once a sealed Dewar is opened, Client, or Client’s healthcare provider, is responsible for ensuring all of Client’s unused Specimens are transferred to a suitable cryogenic storage container. ***Opened Dewars are not suitable, nor should they be used, for cryogenic storage of Specimens. Specimens may not be returned to Xytex to be placed back into storage once a Dewar’s seal is broken.***

Dewar Ownership/Condition: Ownership of each Dewar shall at all times remain with Xytex. Client agrees not to deface, obliterate, remove or cover any tag or name plate on any Dewar showing the serial number or identifying such Dewar as Xytex property.

Shipping Information: Client understands it is Client’s responsibility to provide an accurate ship to address, and Xytex shall not be responsible for any damages resulting from Client providing inaccurate shipping information.

3. PAYMENT OF FEES

Client hereby agrees to pay all fees stated in Sections 2 hereinabove. Xytex reserves the right to periodically adjust its fees. Xytex accepts payment by major credit cards or check. Payments by check must allow for the funds to be deposited and available to Xytex before an order will be processed. For payments by major credit card, Client represents Client is an authorized user of the credit card, and Client authorizes Xytex to charge the credit card for the services at the time an order is placed.

4. NO WARRANTIES/LIABILITY LIMITATION

With the exception of the Dewar warranty stated in Section 2 hereinabove, all Xytex products and services are provided “as is” with no representations or warranties of any kind, either express or implied including without limitation implied warranties of merchantability or fitness for a particular purpose.

Client agrees that damages in the event of a loss or destruction of Client’s Specimens would be highly conjectural, speculative and difficult to determine. Therefore, Client agrees Xytex’s liability related to services performed under this Agreement shall be limited to an amount equal to the fees paid by Client stated hereinabove. Xytex shall not be liable for any special, incidental, consequential, punitive or exemplary damages, including costs and expenses associated with infertility treatment, in connection with this Agreement.

5. INDEMNIFICATION

Client agrees to indemnify, defend and hold harmless Xytex and its affiliates, and each of their shareholders, officers, directors, employees, agents, representatives, contractors, healthcare providers, vendors, successors and assigns, from any and all claims, losses, demands, damages, liabilities, offsets, charges, costs, obligations, or causes of action and expenses, including attorneys' and experts' fees, asserted by any third party, including Client's spouse, intimate partner, offspring, surrogate or gestational carrier, against Xytex arising out of or related to shipment of Specimens under this Agreement.

6. DISPUTE RESOLUTION

Any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this Agreement to arbitrate, shall be determined by arbitration before a panel of three (3) arbitrators. Within fifteen (15) days after the commencement of arbitration, each party shall select one person to act as arbitrator, and the two so selected shall select a third arbitrator within thirty (30) days of the commencement of the arbitration. If the arbitrators selected by the parties are unable or fail to agree upon the third arbitrator within the allotted time, the third arbitrator shall be appointed by JAMS in accordance with its rules. All arbitrators shall serve as neutral, independent and impartial arbitrators. For Clients based in the United States of America, the arbitration shall be administered by JAMS pursuant to JAMS' Streamlined Arbitration Rules and Procedures. For international Clients, the arbitration shall be administered by JAMS pursuant to JAMS' International Arbitration Rules. The place of arbitration will be in Richmond County, Georgia and the language used in the arbitral proceedings will be English. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. This clause shall not preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction. Arbitration costs will be borne equally between Xytex and Client. If the arbitrators determine a party to be the prevailing party under circumstances where the prevailing party won on some but not all of the claims and counterclaims, the arbitrators may award the prevailing party an appropriate percentage of the costs and attorneys' fees reasonably incurred by the prevailing party in connection with the arbitration. The parties shall maintain the confidential nature of the arbitration proceeding and the Award, including the Hearing, except as may be necessary to prepare for or conduct the arbitration hearing on the merits, or except as may be necessary in connection with a court application for a preliminary remedy, a judicial challenge to an Award or its enforcement, or unless otherwise required by law or judicial decision.

7. GENERAL PROVISIONS

Governing Law: This Agreement shall be governed, construed, and enforced in accordance with the laws of the State of Georgia.

Headings: The headings in this Agreement are for convenience of reference only, are not a part of this Agreement and shall not limit or otherwise affect the meaning hereof.

Entire/Prior Agreement: This Agreement represents the complete and exclusive statement of the mutual understanding of the parties.

Severability: If any provision of this Agreement is found to be unlawful, void, invalid or for any reason unenforceable by any court, then that provision shall be deemed ineffective and severable from this Agreement only to the extent it is in contravention of applicable laws, and shall not affect the validity and enforceability of any remaining provisions hereof.

Compliance with Foreign Laws: Xytex does not represent its products and services are compliant with laws outside of the United States. Clients in foreign jurisdictions are ultimately responsible for compliance with local laws.

Notices: Xytex shall satisfy any notice obligation or requirement under this Agreement by sending its correspondence to the most recent address or email provided by Client. Client agrees to keep Xytex informed in writing of any change in Client's pertinent contact information including, current mailing address, email address and telephone numbers. Any notices to Xytex shall be made in writing and mailed to Xytex Tissue Services, Inc., 1100 Emmett Street, Augusta, Georgia 30904.

Binding Effect: This Agreement will be binding upon the parties and their respective assignees, heirs, executors, and administrators.

Force Majeure: In no event shall Xytex be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services, it being understood that Xytex shall use reasonable best efforts which are consistent with accepted practices in the tissue storage industry to resume performance as soon as practicable under the circumstances.

Survival: The provisions of Sections 4, 5, and 6 shall survive the termination of this Agreement.

Counterparts and Electronic Signatures: This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same Agreement. Signatures transmitted by facsimile, email or other means of electronic transmission shall be deemed for all purposes to have the same legal effect as delivery of an original executed copy of this Agreement.

8. SIGNATURES

By affixing their signatures hereto, Client and Xytex agree to be bound by all of the terms set forth in this Agreement. This Agreement is not effective unless signed by an authorized representative of Xytex.

Donor Number Purchased:

Client:

Print Client's Name	Client Signature	Date
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Parent/Legal Guardian (If applicable):

Print Parent/Legal Guardian's Name	Parent/Legal Guardian's Signature	Date
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Xytex:

Authorized Representative	Authorized Representative Signature	Date
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