

NeuroStrip™ - Terms and conditions of sale

1 Application of these Conditions

- (a) Unless otherwise agreed in writing by Control Bionics, these Conditions apply to all Goods and Services delivered or supplied, or to be delivered or supplied, by Control Bionics to the Customer, and are taken to be incorporated in and form part of each Contract.
- (b) Each Contract constitutes the whole agreement and understanding between Control Bionics and the Customer in relation to the relevant Goods and Services.
- (c) Unless otherwise agreed in writing by Control Bionics:
 - (i) if there is any conflict between the terms set out in a Quotation (on the one hand) and the terms of these Conditions (on the other hand), then the terms of the Quotation prevail to the extent of the conflict; and
 - (ii) if there is any conflict between the terms set out in a Purchase Order or other document issued by or on behalf of the Customer to Control Bionics (on the one hand) and the terms of these Conditions (on the other hand), then the terms of these Conditions prevail to the extent of the conflict.
- (d) Control Bionics may from time to time vary these Conditions, other than in relation to Prices (which may only be varied in accordance with clause 4), and except to the extent these Conditions are incorporated in any Contract that has already been formed between Control Bionics and the Customer. Written notice of any variation to these Conditions does not need to be given in relation to any new Contract that is formed between Control Bionics and the Customer, if the updated version of these Conditions is provided to the Customer at (or before) the time that the new Contract is formed.

2 Acceptance and cancellation

- (a) The Customer is taken to have acknowledged and accepted these Conditions by accepting a Quotation issued by Control Bionics in accordance with clause 3(d), making and/or facilitating payment to Control Bionics in respect of Goods and/or Services, or agreeing to any other document provided by Control Bionics that incorporates these Conditions by reference.
- (b) A Contract between Control Bionics and the Customer is formed when the Customer accepts a Quotation in accordance with clause 3(d).
- (c) Once a Contract has been formed, it may only be cancelled by the Customer with the written consent of Control Bionics. If such consent is given, then the Customer must reimburse Control Bionics on demand for all losses, damages and expenses directly or indirectly incurred by Control Bionics in the preparation and procurement of the relevant Goods and/or Services under that Contract.

3 Quotations

- (a) Unless Control Bionics states otherwise in any Quotation, the Quotation:
 - (i) is subject to change or withdrawal by Control Bionics at any time prior to receipt by Control Bionics of written acceptance by the Customer; and
 - (ii) will be taken to have been rejected by the Customer if not accepted by the Customer in writing within 30 days after the date of the Quotation (or by such other date, or within such other period, as is specified by Control Bionics in the Quotation).
- (b) Subject to clause 3(c), if Control Bionics states in a Quotation that any Price specified in that Quotation is firm or fixed, then that Price will apply to the relevant Goods or Services if the Customer accepts (or is taken to accept) the Quotation in accordance with clause 3(d) within 30 days after the date of the Quotation (or by such other date, or within such other period, as is specified by Control Bionics in the Quotation).
- (c) If, after Control Bionics gives the Customer a Quotation for particular Goods and/or Services (including in response to a request by the Customer to supply it with those Goods and/or Services, or goods and/or services corresponding to particular specification(s), description(s) and/or requirement(s) notified by the Customer to Control Bionics) (**Initial Quotation**):
 - (i) the Customer notifies Control Bionics of any changes to those Goods and/or Services (or to those specification(s), description(s) or requirement(s)), including (without limitation) any change to the quantity or volume of Goods and/or Services required by the Customer (including where more than one such notification of changes is given by the Customer); and
 - (ii) in response to any notification by the Customer under clause 3(c)(i), Control Bionics gives the Customer a new or revised Quotation for Goods and/or Services (each a **Subsequent Quotation**),then the Initial Quotation and any prior Subsequent Quotation will be taken to be withdrawn and void.
- (d) The Customer is taken to have accepted a Quotation if it notifies Control Bionics that it accepts the Quotation (including by email or by issuing a Purchase Order or other similar document to Control Bionics).

4 Prices

- (a) Subject to the other provisions of this clause 4, all prices payable by the Customer to Control Bionics for Goods and Services supplied or to be supplied by Control Bionics to the Customer (**Prices**) are as set out in the relevant Contract.

- (b) All Prices are subject to change by Control Bionics from time to time, except:
 - (i) as provided otherwise in clause 3(b); and
 - (ii) for any Price of Goods and/or Services set out in an existing Contract between Control Bionics and a Customer for the sale, supply and purchase of those Goods and/or Services (but those Prices may be varied in any way specified in that Contract).
- (c) If Control Bionics specifies a discounted Price for any Goods or Services in a Quotation based on a specified minimum quantity or volume of those Goods or Services (as applicable), but the Contract is for a quantity or volume of those Goods or Services that is less than that specified minimum quantity or volume, then despite anything else to the contrary in these Conditions, the Customer agrees to pay Control Bionics the standard (non-discounted) Price of those Goods or Services as at the date of the Quotation (as notified by Control Bionics to the Customer).
- (d) Unless otherwise stated in a Contract, the Prices do not include any of the following in relation to the relevant Goods and Services:
 - (i) any applicable GST (as that term is defined in the GST Act);
 - (ii) any other taxes, duties, levies, withholding taxes and other government fees and charges applicable to the relevant Goods and Services, but excluding income tax on Control Bionics' income and (if applicable) customs duties, tariffs and export charges (**Other Taxes**); and
 - (iii) if delivery of the Goods to the Customer is to occur in a jurisdiction outside Australia, all customs duties, tariffs and import charges that may apply in relation to the Goods in that jurisdiction (**Import Taxes**).
- (e) Unless otherwise stated in a Contract, the amount of any applicable GST, Other Taxes and (if applicable) Import Taxes will be added to, and must be paid by the Customer to Control Bionics, in the same way and at the same time as the Price for the relevant Goods or Services is payable under or in connection with the relevant Contract.
- (f) Despite anything else to the contrary in these Conditions (or in any Contract), any applicable GST, Other Taxes, Import Taxes, rates of exchange and any other similar amounts quoted by Control Bionics to the Customer (or which otherwise apply to the relevant Goods or Services) are those prevailing as at the date on which they are quoted. Any increase or decrease in these amounts will be to the Customer's account if that change is notified to the Customer before the relevant Goods or Services are delivered or supplied to the Customer.
- (g) Control Bionics will issue invoices to the Customer for Goods and Services sold or supplied by Control Bionics to the Customer. Each Invoice must be in a form and substance that will constitute a tax invoice (as defined in the GST Act).

5 Payments by Customer

- (a) The Customer must pay the Price and any other amounts due in respect of Services (including any subscription charges for relevant Services) to be supplied under the Contract in accordance with the terms of the Contract (including as set out in the Quotation).
- (b) Each payment must be made by the Customer:
 - (i) by cash, by electronic funds transfer, by credit card or by any other method as may be agreed by Control Bionics and the Customer;
 - (ii) in the relevant currency under clause 6;
 - (iii) into such bank account as directed by Control Bionics; and
 - (iv) without deduction or set-off of any kind.
- (c) To the maximum extent permitted by law, and except as expressly provided otherwise elsewhere in these Conditions or in any Contract, no part of the Price or other amount paid by the Customer to Control Bionics in respect of any Goods or Services is refundable.

6 Currency

The Customer must pay all Prices, GST, Other Taxes, Import Taxes (if applicable) and any other fees, costs and charges related to the Goods and/or Services:

- (a) in the currency notified in writing by Control Bionics to the Customer before the relevant Contract is entered into (with the relevant exchange rate being determined by Control Bionics); or
- (b) if no relevant currency is notified by Control Bionics, in AUD (Australian dollars).

7 Delivery of Goods

- (a) If Control Bionics agrees to arrange delivery of Goods ordered by the Customer, then, unless specified otherwise in the relevant Contract:
 - (i) all costs of freight and delivery of the Goods to the agreed delivery location specified in the Contract, and associated freight insurance costs, are to be borne by the Customer;
 - (ii) subject to clause 7(a)(iii), the Goods will be taken to be delivered when they are delivered to the relevant delivery location specified in the Contract;

- (iii) if no location for delivery is specified in the Contract, delivery of Goods will be taken to occur at the time when Control Bionics notifies the Customer that the Goods are ready for collection at Control Bionics' premises. If the relevant delivery location specified in the Contract is unattended when Control Bionics (or its nominated carrier) delivers any Goods, delivery of those Goods will be taken to have occurred at the time the Goods are left at the unattended location; and
- (iv) the parties agree that Control Bionics is not a common carrier.
- (b) Delivery of Goods may be made in separate deliveries. Each separate delivery must be accepted and fully paid for by the Customer, notwithstanding any late delivery or any non-delivery of any other delivery.
- (c) Any times quoted by Control Bionics or its carrier for delivery of Goods are estimates only. Control Bionics will not be liable to the Customer for any delay in the delivery of any Goods. Any delay in delivery does not entitle the Customer to terminate any Contract.

8 Risk

Unless specified otherwise in the relevant Contract, risk of loss or damage in respect of the Goods will pass to the Customer at the time Control Bionics delivers (or, if applicable, Control Bionics is taken to have delivered) those Goods to the Customer under clause 7(a).

9 Retention of title

- (a) The Customer agrees that legal title to and property in the Goods are retained by Control Bionics (and that for the purpose of the PPSA, Control Bionics retains a Security Interest in all Proceeds relating to the Goods), and such legal title will not pass to the Customer, until payment is received in cleared funds from the Customer of the total Price payable for those Goods under the Contract (including, where applicable, all instalments of the Price).
- (b) The Customer acknowledges and agrees that the Contract constitutes a Security Agreement under the PPSA and secures Control Bionics' right to receive the Price of all Goods and Services sold under the Contract and all other amounts from time to time owing by the Customer to Control Bionics under that Contract.
- (c) The Customer must promptly do anything required by Control Bionics to ensure that the relevant Security Interest is a perfected Security Interest and has priority over all other Security Interests in the Goods and any Proceeds relating to the Goods.
- (d) Until legal title and property in any Goods has passed to the Customer under this clause 9, subject to clause 9(f), the Customer may only use the Goods in the ordinary course of the Customer's ordinary business and/or for any other use specified in the Contract under which the Goods were supplied by Control Bionics to the Customer:
- (e) If the Customer fails to pay any amount to Control Bionics in relation to any Goods and/or Services by the due date required under the relevant Contract for that payment, then Control Bionics may (without limiting any of its other rights and remedies) recover and resell any of the Goods in which legal title and property has not passed to the Customer, and/or recover any Proceeds relating to the Goods.
- (f) In addition to any rights Control Bionics may have under Chapter 4 of the PPSA, if the Customer defaults in paying any amount to Control Bionics when it is due under the Contract:
 - (i) the Customer's rights under clause 9(d) in respect of any Goods, title in which has not passed to the Customer under this clause 9, will cease;
 - (ii) Control Bionics may, without notice, enter any premises where it suspects the Goods may be located and take possession of them without committing a trespass; and
 - (iii) the Customer authorises Control Bionics to enter any premises where the Goods are located to take possession of the Goods for that purpose at any time.
- (g) The Customer agrees to waive any right to receive any notice or statement from Control Bionics under the PPSA, except to the extent that the giving of that notice or statement is required by the PPSA and cannot lawfully be excluded by agreement (or cannot be lawfully waived by the Customer).
- (h) To the maximum extent permitted by law:
 - (i) for the purpose of sections 115(1) and 115(7) of the PPSA:
 - (A) Control Bionics need not comply with sections 95, 118, 121(4), 125, 130, 132(3)(d) or 132(4) of the PPSA; and
 - (B) sections 142 and 143 of the PPSA are excluded;
 - (ii) for the purpose of section 115(7) of the PPSA, Control Bionics need not comply with sections 132 and 137(3) of the PPSA; and
 - (iii) if the PPSA is amended after the date of the relevant Contract to permit Control Bionics and the Customer to agree to not comply with, or to exclude, other provisions of the PPSA, then Control Bionics may notify the Customer that any of those provisions are excluded, or that Control Bionics need not comply with any of those provisions, as notified to the Customer by Control Bionics, and that notice will be binding on the Customer.
- (i) If Control Bionics exercises a right, power or remedy in connection with any Contract, then that exercise is taken not to be an exercise of a right, power or remedy under the PPSA, unless Control Bionics states otherwise at the time of exercise. However, this clause 9(i) does not apply to a right, power or remedy that can only be exercised under the PPSA.

- (j) The Security Interests arising under this clause 9 attach to the relevant Goods when the Customer obtains possession of those Goods and the parties confirm that they have not agreed that any Security Interest arising under this clause 9 attaches at any later time.
- (k) Capitalised terms used in this clause 9 that are not otherwise defined in these Conditions have the meaning given in the PPSA.

10 Services

If required under a Contract, Control Bionics must provide the Services to the Customer, with the details of the relevant Services, the timing of the Services and any applicable Prices being specified in that Contract (or to the extent those items are not specified in that Contract, as notified by Control Bionics from time to time).

11 Default

- (a) If the Customer fails to pay to Control Bionics any amount when due under a Contract, then Control Bionics may (at its sole discretion and without limiting its other rights and remedies) do any one or more of the following:
 - (i) suspend performance of its obligations under or in connection with that Contract until the outstanding amount is paid in full;
 - (ii) suspend the Customer's and its Authorised Users' rights to use the IT Products under the applicable End User Licence Terms (including any associated account(s)), and Control Bionics may block the Customer's and its Authorised Users' access to the IT Products (and to any associated account(s)), until the outstanding amount is paid in full; and/or
 - (iii) charge interest on the amount outstanding, calculated on a daily basis until paid in full at the Prescribed Rate, calculated from and including the date on which the relevant payment became due until but excluding the date on which the relevant payment is made, which interest is payable by the Customer to Control Bionics on demand (and the delivery of Goods by Control Bionics does not waive Control Bionics' right to charge interest on any outstanding amounts).
- (b) Without limiting its other rights and remedies, Control Bionics may terminate a Contract with immediate effect by giving written notice to the Customer, if the Customer:
 - (i) breaches any obligation of the Customer under that Contract (including the obligation of the Customer to pay any amounts when due under that Contract) and, if the breach is capable of remedy, the Customer does not remedy the breach within 5 Business Days after being notified in writing by Control Bionics; or
 - (ii) has a receiver, receiver and manager, liquidator, provisional liquidator, trustee, mortgagee in possession, administrator, controller or inspector appointed under any law (or any similar official is appointed in respect of the Customer or any of its assets) or the Customer is unable to pay its debts when due or otherwise is, becomes or is deemed to be insolvent or bankrupt (but if Control Bionics' right to terminate that Contract under this clause 11(b)(ii) is unenforceable as a matter of law, that unenforceability does not limit Control Bionics' right to terminate that Contract on any other grounds permitted by these Conditions or that Contract).

12 Consequences of termination

- (a) Subject to the other provisions of this clause 12, on termination of a Contract, the Contract is at an end as to its future operation except for the enforcement of any right or claim that arises on, or has arisen before, the termination.
- (b) On termination of a Contract for any reason, and without limiting its other rights and remedies, Control Bionics may, at its option, exercise any one or more of the following rights by giving written notice to the Customer:
 - (i) suspend delivery or supply of further Goods and/or Services to the Customer under the Contract; and/or
 - (ii) exercise any other rights that Control Bionics has under the Contract and any other applicable law.
- (c) If a Contract is terminated by Control Bionics under clause 11(b), without limiting its other rights and remedies, and despite anything else to the contrary in the Contract, all amounts accrued and owing by the Customer to Control Bionics, together with any instalments of the Price of Goods that would otherwise have become payable under the terms of the Contract after the date of termination, become immediately due and payable by the Customer to Control Bionics.
- (d) This clause 12, and clauses 13 to 18 (both inclusive), survive termination of any Contract.

13 Confidentiality

- (a) Subject to clause 13(b), the Customer must:
 - (i) keep the Confidential Information confidential and not directly or indirectly disclose, divulge or communicate any Confidential Information to, or otherwise place any Confidential Information at the disposal of, any other person without the prior written approval of Control Bionics;
 - (ii) take all reasonable steps to secure and keep secure all Confidential Information coming into the Customer's possession or control; and
 - (iii) not memorise, use, modify, reverse engineer or make copies, notes or records of the Confidential Information for any purpose other than in connection with the performance by the Customer of obligations under a Contract.

- (b) The obligations of confidentiality under clause 13(a) do not apply to any disclosure of Confidential Information by the Customer to the extent required by law or as is reasonably necessary to enable the Customer to use the Goods and/or Services in accordance with any user guide or manual or instructions issued by Control Bionics.
- (c) Immediately on the written request of Control Bionics or on the termination of a Contract for any reason, the Customer must cease the use of all Confidential Information of or relating to Control Bionics (or any Related Entity of Control Bionics) and deliver to Control Bionics all documents and other materials in its possession or control containing, recording or constituting that Confidential Information or, to the extent directed by Control Bionics, destroy, and certify to Control Bionics that it has destroyed, those documents and materials.

14 Privacy and data protection

- (a) Each of Control Bionics and the Customer must comply with the Privacy Laws in connection with its collection, use, disclosure, storage and handling of Personal Information under or in connection with these Conditions.
- (b) The Customer acknowledges that the Goods and the User Interface Software collect User Data from Authorised Users, and that this may include Health Information and other Sensitive Information about those individuals.
- (c) Before permitting any individual to become an Authorised User, the Customer must:
 - (i) provide that individual with any notices, and obtain any consents, that are required under the Privacy Laws for Control Bionics to collect, use and disclose that individual's Personal Information (including Health Information) as described in this clause 14 and in the End User Licence Terms;
 - (ii) ensure that individual has read and accepted the End User Licence Terms before they access or use the User Interface Software and maintain a record of such consent to be provided to Control Bionics on your request; and
 - (iii) where that individual is under the age of 18 years, ensure that a parent or legal guardian of that individual provides any consent, and accepts the End User Licence Terms, on that individual's behalf.
- (d) Control Bionics will collect, use and disclose User Data:
 - (i) to provide the Goods and User Interface Software to the Customer and Authorised Users, including generating performance profiling, return-to-play and other reports;
 - (ii) to provide technical support, maintenance and updates;
 - (iii) to comply with its legal obligations; and
 - (iv) for any other purpose disclosed to, and consented to by, the relevant individual under the End User Licence Terms.
- (e) As between Control Bionics and the Customer, User Data (in identified form) remains owned by the Customer. Nothing in this clause 14 affects Control Bionics' ownership of, or rights in, the IT Products, any Aggregated Data, or the Control Bionics Database.
- (f) The Customer acknowledges and agrees that Control Bionics may de-identify User Data and combine it with other data to create Aggregated Data, and may use Aggregated Data to develop, improve and offer the Control Bionics Database and other products and services, including to other customers or third parties. This clause does not permit Control Bionics to disclose User Data in a form that identifies, or could reasonably be used to re-identify, any individual, except as otherwise permitted under this clause 14 or required by law.
- (g) The Customer acknowledges that Control Bionics may, for the purposes described in this clause 14, store, process or disclose Personal Information (including User Data) outside Australia, including in the United States of America and Singapore, where Control Bionics' database and hosting providers and their sub-processors are based or from which they may access data for support, maintenance and operational purposes. Personal Information is primarily stored in the region geographically closest to the Customer (for Customers in Australia, this is a data centre located in the Sydney region of Australia), and where the Customer is located outside Australia, primary storage may occur in the country or region closest to the Customer. Control Bionics will take reasonable steps to ensure that any overseas recipient of Personal Information handles it consistently with the Australian Privacy Principles, to the extent required by the Privacy Act.
- (h) Control Bionics will take reasonable technical and organisational steps to protect Personal Information it holds from misuse, interference, loss, and unauthorised access, modification or disclosure.
- (i) Control Bionics' and Customer's respective obligations in connection with an actual or suspected Eligible Data Breach affecting User Data are set out in clause 15 (Data breaches), and this clause 14 is subject to clause 15.
- (j) Control Bionics will retain User Data only for as long as reasonably necessary for the purposes described in this clause 14, and will delete or de-identify User Data on request by Customer or on termination of the Contract, except to the extent Control Bionics is required or permitted by law to retain it, or the data has already been de-identified in accordance with this clause.
- (k) Requests by an individual to access or correct their Personal Information, or complaints about Control Bionics' handling of Personal Information, may be made in accordance with clause 23 (How to contact us).
- (l) This clause 14 and the corresponding clause of the End User Licence Terms concerning privacy and data protection together constitute Control Bionics' privacy notice to the Customer and Authorised Users for the purposes of the Goods and User Interface Software.

15 Data breaches

- (a) If the Customer becomes aware of an actual or suspected Eligible Data Breach relating to User Data, or any other actual or suspected data breach, security incident or unauthorised access affecting the Goods or User Interface Software, the Customer must:
 - (i) immediately notify Control Bionics in writing, including all known details of the incident;
 - (ii) not itself investigate, remediate or take any other action in relation to the incident without Control Bionics' prior written approval, except to the extent reasonably necessary to take immediate steps to contain or mitigate further loss or damage arising from the incident;
 - (iii) cooperate with, and provide all reasonable assistance requested by Control Bionics in connection with, any investigation into the incident; and
 - (iv) comply with Control Bionics' reasonable directions in relation to any User Data affected by the incident.
- (b) The Customer acknowledges and agrees that, as between Control Bionics and Customer, Control Bionics will be solely responsible for, and will have sole control over:
 - (i) investigating and assessing whether an Eligible Data Breach has occurred;
 - (ii) determining whether, and to whom, notification is required under the Privacy Act or any other applicable law; and
 - (iii) determining the content and timing of any notification to the Office of the Australian Information Commissioner, any affected individual, or any other regulator, and of any public statement, media response or other external communication about the incident.
- (c) If requested by Control Bionics, the Customer will provide all assistance required by Control Bionics in preparing any notification or communication referred to in clause 15(b).
- (d) To the extent permitted by law, the Customer must not, and must ensure its Authorised Users do not, notify any individual, regulator or other third party of an actual or suspected Eligible Data Breach, or make any public statement or other communication about it (including on social or traditional media), without Control Bionics' prior written approval as to both content and timing. Where the Customer is separately required by law to make a notification or disclosure, the Customer must, to the extent legally permitted, consult with Control Bionics before doing so, have regard to Control Bionics' reasonable requests concerning its content and timing, and give Control Bionics as much advance notice as is reasonably practicable.
- (e) Nothing in this clause 15 prevents Control Bionics from making any notification or disclosure that it is required to make under the Privacy Act (including to the Office of the Australian Information Commissioner or to affected individuals) or that it reasonably considers necessary to comply with law, and Control Bionics will comply with its own obligations under Part IIIC of the Privacy Act in relation to an Eligible Data Breach affecting User Data.

16 Damaged/defective Goods and shortages on delivery

- (a) The Customer must, as soon as possible after Control Bionics delivers (or is taken to have delivered under clause 7(a)) any Goods, check:
 - (i) whether the Goods were damaged or defective when delivery occurred (or was taken to have occurred); and
 - (ii) the quantity of the Goods received against the quantity due to be supplied.
- (b) Subject to clause 17(d), and to the terms of any express warranty given by Control Bionics in respect of Goods, Goods will be taken to have been delivered undamaged, with no defects (which are, or would be able to be, identified upon a reasonable inspection of the Goods) and with no shortages, unless the Customer gives Control Bionics written notice of the damage, defect and/or shortage within 5 Business Days after the Customer takes possession of the those Goods.
- (c) If the Customer gives Control Bionics notice of damage or defect under clause 16(b), it must comply with any reasonable instructions in relation to the relevant Goods. Those instructions may include Control Bionics arranging collection of those Goods from the Customer, or the Customer returning those Goods to Control Bionics. If the Goods are found not to be damaged or defective (or are found to have been damaged due to the act or omission of someone other than Control Bionics or its nominated carrier (if applicable)), then the Customer must reimburse Control Bionics for any reasonable costs incurred by Control Bionics in collecting the Goods from the Customer and/or returning the Goods to the Customer.

17 Limitation and exclusion of liability

- (a) Subject to this clause 17, and to the maximum extent permitted by law, Control Bionics will not be liable to the Customer or to any other person for:
 - (i) any loss or damage of any kind to the extent it is caused or contributed to by any wrongful, wilful or negligent act or omission of the Customer, or any of the Customer's employees, agents or contractors; or
 - (ii) any indirect, incidental, special or consequential loss or damage, loss of profits or anticipated profits, economic loss, loss of opportunity, loss of data or information or loss or damage resulting from wasted management time (collectively, **Consequential Loss or Damage**) arising under any Contract, or in connection with any Goods or Services (or in connection with any use by the Customer or any person of any Goods or Services), irrespective of whether the Consequential Loss or Damage is caused by or

relates to breach of contract, statute, tort (including negligence) or otherwise, or whether Control Bionics or any other person was previously notified of the possibility of that Consequential Loss or Damage.

- (b) Any warranty, guarantee, condition, representation, undertaking or other right that would be implied in or otherwise required in connection with any Contract by legislation, common law, equity, trade, custom or usage, is excluded to the maximum extent permitted by law. To the maximum extent permitted by law, Control Bionics makes no representations or warranties in relation to any Goods or Services, except for any express written warranty provided by Control Bionics to the Customer.
- (c) Any advice, recommendation, information or assistance provided by Control Bionics in relation to any Goods and/or Services or their use or application (except to the extent that Control Bionics expressly agrees in writing to provide such advice or information) is given in good faith and, to the maximum extent permitted by law, Control Bionics does not accept any responsibility or liability in relation to any loss or damage arising in respect of any such advice, recommendations, information or assistance.
- (d) Notwithstanding the other provisions of this clause 17 and anything else in any Contract, Control Bionics does not exclude, restrict or modify any warranty, guarantee, condition, representation, undertaking or other right under any statute (including the *Competition and Consumer Act 2010* (Cth)) where to do so would contravene that statute or cause any part of any Contract to be void (**Non-excludable Condition**).
- (e) Subject to the other provisions of this clause 17, the maximum aggregate liability of Control Bionics for all proven losses, damages and claims arising out of any Contract, including liability for breach, in negligence or in tort or for any other common law or statutory action, is limited to the sum of the amounts paid by the Customer to Control Bionics under the Contract to which the relevant breach, negligence, tort or common law or statutory action relates.
- (f) To the maximum extent permitted by law, the liability of Control Bionics for a breach of any Non-excludable Condition in respect of any Goods or Services delivered or supplied under a Contract that are not of a kind ordinarily acquired for personal, domestic or household use or consumption, is limited, at Control Bionics' option to:
 - (i) in the case of Goods:
 - (A) the replacement of the Goods or the supply of equivalent goods;
 - (B) the repair of the Goods;
 - (C) the payment of the cost of replacing the Goods or of acquiring equivalent goods; or
 - (D) the payment of the cost of having the Goods repaired; and
 - (ii) in the case of Services:
 - (A) the supplying of the Services again; or
 - (B) the payment of the cost of having the Services supplied again.

18 Intellectual Property Rights

- (a) The parties acknowledge and agree that all Intellectual Property Rights are owned by Control Bionics. For the avoidance of doubt, nothing in this clause 18 affects any intellectual property rights in User Data (in identified form), which is owned by the Customer in accordance with clause 14(e), or any pre-existing intellectual property rights of the Customer or any third party.
- (b) Nothing in these Conditions:
 - (i) entitles the Customer to acknowledge, display, use, sub-license, publish or otherwise refer to any Intellectual Property Rights, except as expressly provided otherwise in any Contract; or
 - (ii) constitutes a grant to or creates in favour of the Customer any goodwill, proprietary right or ownership in or in relation to any Intellectual Property Rights.
- (c) The Customer must:
 - (i) not represent itself as the owner of or having any interest in the Intellectual Property Rights or any part of them, except as otherwise agreed in writing by Control Bionics;
 - (ii) not use or allow the use of any Intellectual Property Rights or any part of them in a manner that is contrary to or conflicts with or in any way damages the title or interest of Control Bionics in the Intellectual Property Rights;
 - (iii) not challenge or call into question in any way the right, title, interest or goodwill of Control Bionics in respect of the Intellectual Property Rights;
 - (iv) not register or attempt to register, under the provisions of any statute or otherwise, any of the Intellectual Property Rights;
 - (v) not modify, reverse engineer or make a copy of any of the Intellectual Property Rights for any purpose; and
 - (vi) immediately notify Control Bionics of any issue, claim, demand, threat, notice of proceedings or causes of action (whether contingent, accrued or otherwise) against the Customer relating to any Intellectual Property Rights.

19 Force Majeure

- (a) Where any failure or delay by Control Bionics in the performance of its obligations under a Contract is caused, directly or indirectly, by a Force Majeure Event, Control Bionics is not liable for that failure or delay and Control Bionics' obligations under that Contract are suspended, to the extent to which they are affected by the relevant Force Majeure Event, for the duration of the Force Majeure Event.
- (b) If a Force Majeure Event impacts on the performance of the Contract and continues for more than 90 consecutive days, then either party may terminate the Contract by giving at least 5 Business Days' notice to the other party, and if Control Bionics has been paid for any Goods and/or Services but is unable to deliver them, Control Bionics will refund to the Customer the amounts paid by the Customer to Control Bionics in respect of those Goods and/or Services.

20 Health and safety

- (a) The Customer is solely responsible to ensure that all applicable health and safety laws are observed, and other appropriate steps are taken in relation to the handling and use of the Goods.
- (b) Where information is obtained by the Customer (whether from Control Bionics or otherwise) on potential hazards relating to any Goods and/or Services, the Customer must immediately bring that information to the attention of its Authorised Users, employees, agents, sub-contractors, visitors and customers.

21 General

- (a) Headings are used for convenience only and do not affect the interpretation of any Contract.
- (b) Any notice to be given by Control Bionics to the Customer under these Conditions must be in writing, in English and may be given personally, by post or by email.
- (c) The word "person" (including a party) includes a natural person, company, other body corporate, partnership, firm, joint venture, trust, association, government agency and any other body or entity whether incorporated or not, and that person's successors, permitted assigns, substitutes, executors and administrators.
- (d) A reference to either Control Bionics or the Customer includes its respective executors, administrators, successors and permitted assigns.
- (e) Wherever "include" or any form of that word is used, it must be construed as if it were followed by "(without being limited to)".
- (f) If any provision of a Contract is or becomes invalid, void, illegal or unenforceable, the validity, existence, legality and enforceability of the remaining provisions will not be affected.
- (g) A failure or delay by Control Bionics in exercising any right conferred on Control Bionics under any Contract does not operate as a waiver of the right.
- (h) The Customer must not transfer, assign, create an interest in or deal in any other way with any of its rights under any Contract without the prior written consent of Control Bionics.
- (i) The Customer must not set off against or deduct from any Price or other amounts owing to Control Bionics, any amounts owed or claimed to be owed to the Customer by Control Bionics, nor withhold payment of any amount due to Control Bionics because that amount or any part of it is in dispute.
- (j) Each Contract is governed by and must be construed in accordance with the laws of Victoria, Australia. The Customer submits to the non-exclusive jurisdiction of the courts of that State and the Commonwealth of Australia in respect of all matters arising out of or relating to that Contract.

22 Dictionary

In these Conditions, the following terms have the following meanings:

Aggregated Data means data compiled using De-identified Data and other data relating to the use of the Goods and User Interface Software by multiple individuals, in a form from which no individual is identified and could not reasonably be re-identified;

Australian Consumer Law means Schedule 2 of the *Competition and Consumer Act 2010* (Cth);

Authorised User means the Customer or an individual (including an employee, contractor, coach, medical or performance staff member or athlete employed or otherwise engaged by the Customer) who is permitted by the Customer to access or use the Goods and/or User Interface Software;

Business Day means a day that is not a Saturday, Sunday or public holiday in Melbourne, Australia;

Conditions means these General Terms and Conditions of Trade (including any Annexures);

Confidential Information means:

- (a) the terms of the Contract and its subject matter, including Information submitted or disclosed by Control Bionics during negotiations, discussions and meetings relating to the Contract;
- (b) the Intellectual Property Rights;

- (c) all scientific, technical, product and marketing Information, processes (including manufacturing processes), systems, procedures, databases, manuals, formulae, recipes, notes, trade secrets, know-how, financial Information, business records, documentation, advices, reports and other Information used by Control Bionics or relating in any way to the business of Control Bionics (or any Related Entity of Control Bionics);
- (d) Information that at the time of disclosure by Control Bionics is identified to the Customer as being confidential; and
- (e) all other Information belonging or relating to Control Bionics (or any Related Entity of Control Bionics) that is not generally available to the public at the time of disclosure or which the Customer knows, or ought reasonably to be expected to know, is confidential to Control Bionics (or any Related Entity of Control Bionics);

Contract means the contract formed between Control Bionics and the Customer for the sale and supply of Goods and/or Services by Control Bionics to the Customer, upon the Customer accepting a Quotation in accordance with clause 3(d), which contract is comprised of:

- (a) these Conditions;
- (b) any Quotation accepted or taken to have been accepted by the Customer;
- (c) any invoice given by Control Bionics to the Customer;
- (d) any express written warranty given by Control Bionics in respect of the Goods or Services;
- (e) where the relevant Goods and/or Services comprise or include IT Products, the End User Licence Terms; and
- (f) any other agreement or deed agreed and signed by Control Bionics, the Customer (and possibly one or more other parties) relating to sale and supply of the relevant Goods and/or Services;

Control Bionics means Control Bionics (Australia) Pty Ltd ACN 115 466 218 and (if any Goods and/or Services are sold or supplied by any Related Bodies Corporate of Control Bionics (Australia) Pty Ltd ACN 115 466 218) means those Related Bodies Corporate as well;

Control Bionics Database means the longitudinal dataset developed and maintained by Control Bionics using Aggregated Data and other data relating to the use of the Goods and User Interface Software by multiple users, which may be used by Control Bionics for benchmarking, analytics, research, product development and improvement, and for the development of new products and services, and which may be made available or licensed by Control Bionics to third parties (including sporting organisations, researchers, commercial partners and other customers);

Customer means the person specified in or contemplated by a Contract or Quotation as being the purchaser (or proposed purchaser) of the relevant Goods and/or Services from Control Bionics;

De-identified Data means Personal Information that has been treated so that it is no longer about an identifiable individual, or an individual who is reasonably identifiable, having regard to the means reasonably likely to be used to re-identify it;

Device means any computer, laptop, tablet, mobile phone, or other electronic or mobile hardware owned or controlled by the Customer which is capable of running the User Interface Software, and through which the Customer may use and interact with any Goods;

Eligible Data Breach means an “eligible data breach” as defined in Part IIIC of the Privacy Act;

Embedded Software means any software, firmware, or code that is pre-installed by Control Bionics (or other manufacturer of Goods) on or within the control units or other components of any Goods, and which is:

- (a) integral to the operation, functionality, or performance of those Goods;
- (b) not intended for independent use, modification, or installation by the Customer or other end users of those Goods; and
- (c) forms part of the essential operating infrastructure of those Goods;

End User Licence Terms means the end user licence terms and conditions titled “NeuroStrip™ software - End user licence terms” entered into between Control Bionics and users of the User Interface Software, as amended, updated or replaced from time to time;

Force Majeure Event means any act, event or cause beyond the control of the party affected, including:

- (a) an act of God, peril of the sea, accident of navigation, war, sabotage, riot, act of terrorism, insurrection, civil commotion, national emergency (whether in fact or law), martial law, fire, lightning, flood, cyclone, earthquake, landslide, storm or other adverse weather conditions, explosion, power shortage, strike or other labour difficulty (whether or not involving employees of the party concerned), pandemic, epidemic, quarantine, radiation or radioactive contamination;
- (b) action or inaction of a government agency, including expropriation, restraint, prohibition, intervention, requisition, requirement, direction or embargo by legislation, regulation, decree or other legally enforceable order; or
- (c) the failure or inability of any supplier of Control Bionics to deliver or supply any goods or services required by Control Bionics to deliver or supply any Goods and/or Services to the Customer;

Goods means any goods manufactured and/or supplied (or to be manufactured and/or supplied) by Control Bionics to the Customer (including any equipment or other goods specified in any Contract, and any Embedded Software);

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

Health Information has the meaning given in the Privacy Act;

Information means any information, whether oral, graphic, written or in any other form, including:

- (a) forms, memoranda, letters, specifications, processes, procedures, statements, formulae, technology, inventions, trade secrets, research and development information, know how, designs, plans, photographs, microfiche, business records, notes, accounting procedures, financial information, sales and marketing information, names and details of customers, suppliers and agents, employee details, reports, drawings and data;
- (b) copies and extracts made of or from that information and data, whether translated from the original form, recompiled, partially copied, modified, updated or otherwise altered; and
- (c) samples or specimens (if any) disclosed either before or after entering into a Contract;

Intellectual Property Rights means all present and future intellectual and industrial property rights in Goods, Services, Aggregated Data and the Control Bionics Database, including the IT Products (or in any documents or materials in written, electronic or other form that are contained in or associated with any of the Goods, Services, Aggregated Data or the Control Bionics Database, including the IT Products), or otherwise held by Control Bionics, conferred by law and whether existing now or in the future, including:

- (a) patents, designs, trade marks, copyright (including future copyright), rights in circuit layouts, know how, domain names, inventions, trade secrets and any other rights subsisting in the results of intellectual effort in any field, whether or not registered or capable of registration;
- (b) any application or right to apply from registration of any of those rights;
- (c) any registration of any of those rights or any registration of any application referred to in paragraph (b) of this definition; and
- (d) all renewals and extensions of those rights,

but Intellectual Property Rights exclude any intellectual property rights in User Data (in identified form);

IT Products means the Embedded Software and the User Interface Software;

Personal Information has the meaning given in the Privacy Act;

PPSA means the *Personal Property Securities Act 2009* (Cth);

Prescribed Rate means the highest rate of interest charged from time to time by Control Bionics' bank or other financial institution on commercial overdraft facilities (or similar facilities), as notified by Control Bionics to the Customer;

Prices has the meaning given in clause 4;

Privacy Act means the *Privacy Act 1988* (Cth);

Privacy Laws means the Privacy Act (including the Australian Privacy Principles) and any other applicable law dealing with the collection, use, disclosure, storage or security of Personal Information;

Purchase Order means any purchase order, written notice of acceptance, instruction, email or other document given or issued by the Customer to Control Bionics as the Customer's acceptance of a Quotation in accordance with clause 3(d);

Quotation means a written quotation or tender (however called) for the sale or supply, or the proposed sale or supply, of Goods and/or Services by Control Bionics to the Customer, which quotation or tender is submitted by Control Bionics to the Customer;

Related Body Corporate has the meaning given in the *Corporations Act 2001* (Cth);

Related Entity has the meaning given in the *Corporations Act 2001* (Cth);

Sensitive Information has the meaning given in the Privacy Act;

Services means any services supplied by Control Bionics to the Customer in connection with the Goods, including IT Products (other than the Embedded Software) and any services specified in any Contract, including (if applicable) any training in the use and features of the Goods and any IT Products agreed to be provided by Control Bionics to the customer;

User Data means Personal Information (including Health Information) about an individual that is generated through, or collected via, that individual's use of the Goods and/or User Interface Software, including electromyography (EMG) and other neuromuscular signal data, session recordings, video capture (if applicable), performance metrics and assessment reports; and

User Interface Software means any software application made available by Control Bionics for download and installation by the Customer and other users of Goods on their Devices, personal computers, mobile devices, or other compatible hardware, which enables the Customer and those other users to locally interact with and use those Goods. This includes, but is not limited to, desktop software and any mobile applications provided by Control Bionics for such purposes.

23 How to contact us

If you have any questions about these Conditions or any Goods or Services, please contact us in one of the following ways:

- by phone: +61 (03) 9897 3576;

- by email: support@controlbionics.com; or
- by post: Level 4, 11-13 Pearson Street, Cremorne VIC 3121