



Control Bionics, Inc. (“Company”)  
TERMS AND CONDITIONS OF SALE  
(these “Terms”)

VERSION **05.12.21**

Except as otherwise expressly provided, capitalized terms used in these Terms shall have the meanings given them in these Terms. “Company” means Control Bionics Incorporated. “Date of Sale” means the date the Product was shipped to the purchaser, end user, or their designee for shipping purposes as determined by reference to confirmation of pick up by the carrier, including for Products that are provided on a trial basis that are not returned without purchase. “Products” means any Company products. “You” and other forms of that pronoun shall mean the initial purchaser and any later transferee of or user or possessor of the Products.

Some of these Terms may not be enforceable as written under mandatory laws that may be applicable to You and these Terms (such laws, “Mandatory Law”) and/or You may be provided more rights under such Mandatory Laws than those provided in these Terms (such rights, “Mandatory Rights”). In such a case, to the fullest extent permitted by such Mandatory Law, such Terms shall be modified, or if Mandatory Law does not permit such modification, then they shall be eliminated, to the minimum extent possible to comply with such Mandatory Law while keeping to the maximum extent possible the economic intention of such provisions, and these Terms shall be modified (or so eliminated) to provide to the minimum extent permitted by such Mandatory Law, such Mandatory Rights.

These Terms shall continue to apply in the case of any transfer by You of a Product to any other person or entity, including by loan or by providing access, use, or possession, temporary or permanent.

I. STANDARD PACKAGES. Company’s standard product packages (a “Package”) consist of the following:

**NeuroNode**

- (1) one NeuroNode EMG device (“NeuroNode”)
- (2) one NeuroNode battery kit (battery wall port, battery charging cable, battery charging base) (the “Battery Kit”)
- (3) one NeuroBand
- (4) a 1-year supply of EMG sensors

**NeuroNode Trilogy**

- (1) one Trilogy unit with screen and eye-gaze technology (the “Trilogy”)
- (2) one NeuroNode

- (3) one Battery Kit
- (4) one NeuroBand
- (5) a 1-year supply of EMG sensors

### **GridPad Trilogy**

- (1) one GridPad unit with screen and eye-gaze technology (the “Gridpad”)
- (2) one NeuroNode
- (3) one Battery Kit
- (4) one NeuroBand
- (5) a 1-year supply of EMG sensors

### **Control Bionics CCS**

- (1) one iPad display device (the “iPad”)
- (2) one NeuroNode
- (3) one NeuroNode Battery Kit
- (4) one NeuroBand
- (5) a 1-year supply of EMG sensors

Accessories and components are also available for purchase separately.

II. LIMITED WARRANTY: Company provides the following limited warranties for the applicable Products, the period of each such warranty commencing on the Date of Sale of the applicable Product and ending at the end of such period (such limited warranty, the “Warranty”): (a) for the twenty-four (24) months (or such longer time as may have been purchased by You as an extended warranty) from the Date of Sale, (the “Device Warranty Period”) a NeuroNode, Trilogy, or Gridpad (collectively, the “Devices”) and the Company Software contained therein will be free from material defects in materials or workmanship and will function in accordance with the use as intended by Company (which is solely for communication), in all cases wear, tear, abuse, and accidental damage excepted; and (b) that that for twelve (12) months from the Date of Sale (the “Battery Warranty Period”), the Battery Kit will be free from material defects in materials or workmanship, wear, tear, abuse, and accidental damage excepted. The Warranty does not apply to any products other than the Devices and the Company Software, and in particular does not apply to any other Device Software, for which Company disclaims all liability to the maximum extent permitted by Mandatory Law, nor to any consumable items. The iPad comes with the standard Apple iPad warranty and You must look to Apple for warranty coverage for then iPad. If you discover a defect in a Device, the Company Software, or in the Battery Kit and notify Company in writing at 745 Center Street, Suite 303, Milford, Ohio 45150 prior to the end of the Warranty Period for the Device and prior to the end of the Battery Warranty Period for the Battery Kit, Company will, at its option, repair your Device or the Battery Kit or replace your Device or the Battery Kit with a new or refurbished unit of the same or similar model, provided, however, that Company’s sole responsibility with respect to any material defects in the Company Software discovered and notified to Company within the Device Warranty Period, shall be to remedy the software defect. Other than as provided in these Terms, no Products are returnable once the order for them is accepted by Company. The Warranty and the Battery Warranty are valid only for the initial end-user (which for purposes of these Terms shall be the patient first using the Device) and no subsequent acquirer, user, or

licensee of the Products, and apply only to new, not used or refurbished, Products. Any transfer, license, use or other disposition (a “Disposition”) of all or part of a Product to any person, entity or entity-like organization other than the initial end-user shall immediately void the Warranty and any and all other warranties in connection with such Product. Separately purchased components and accessories come only with the warranty, if any, specified in the component or accessory packaging, or as may be required by Mandatory Law.

III. LIMITATIONS ON THE WARRANTY: To the maximum extent permitted by Mandatory Law, Company’s total aggregate liability under the Warranty shall not, in any case, exceed the total price actually paid for the applicable Product. Products and accessories other than the Devices and the Battery Kits (such products and accessories, “Non-Warranted Products) are not covered by the Warranty. The Devices (and any other product that may have a warranty by statute) and the Battery Kit are NOT covered by the Warranty where the defect and/or malfunction is caused, whether in whole or in part, by: (a) Non-Warranted Products or their use, (b) any alteration or modification to any of the Device, the Battery Kit, or any Device Software by anyone other than Company, (c) any use of any part of the Device, the Device Software, or Battery Kit in a way which is inconsistent with its user manual or its purpose as intended by Company or any use by anyone other than the initial end-user, (d) negligence or contributory negligence you or the user or someone other than Company, or (d) normal or abnormal wear and tear, abuse, or accidental damage of any part of the Device, the Company Software, or the Battery Kit. Any warranty by Company of any Product is deemed null and void if any damage has been caused, in Company’s sole judgment, by disassembly or other modification by any party who is not specifically authorized by Company to conduct such disassembly or modification. To the extent that any Non-Warranted Product is provided with a warranty from Company through the operation of Mandatory Law, then, to the maximum extent permitted by such Mandatory Law, the warranty of such Non-Warranted Product shall be subject first, to all of the limitations set forth in the applicable warranty provided by any manufacturer of the Non-Warranted Product who is other than Company, and second, to the extent any provision of such warranty is not enforceable, to the terms of the Warranty as if such product were a Battery Kit with the Battery Warranty Period being reduced to the shorter of three (3) months or the shortest period permitted by Mandatory Law. The Warranty replaces all other warranties in connection with any Product, express or implied including, but not limited to, any implied warranties of merchantability, fitness for a particular purpose, durability, title, or non-infringement of intellectual property. If Mandatory Law does not permit the exclusion of implied warranties with regard to the Device, the Device Software, or the Battery Kit, then, to the maximum extent so permitted by Mandatory Law, all express and implied warranties are excluded to the maximum extent permitted and are, to the maximum extent so permitted, limited by the same limitations of the Warranty, including by limiting the duration of such to Warranty to the Device Warranty Period or the Battery Warranty Period, as applicable. Before returning any Product, you must first contact Company at [neuronode@conrolbionics.com](mailto:neuronode@conrolbionics.com) to obtain a Return to Manufacturer Authorization.

IV. SPECIAL MEDICARE/MEDICAID PROVISION. If purchase of a Product is being funded by Medicare or Medicaid, then the following shall also apply notwithstanding anything to the contrary: (a) CBI will honor all warranties express and implied under state law that are applicable to the Product (which warranties shall in the case of Medicare or Medicaid

beneficiaries only become part of the Warranty); (b) CBI will notify all Medicare and Medicaid beneficiaries regarding CBI's warranty coverage of and for any Products that are sold or rented to them under Medicare or Medicaid; (c) CBI will not charge the Medicare or Medicaid beneficiary or the program for the repair or replacement of items or services covered under the Warranty; and (d) an owner's manual with Warranty information will be provided to Medicare and Medicaid beneficiaries for all durable medical equipment where this manual is made available.

V. LIMITATION OF LIABILITY/ASSUMPTION OF RISK: You (You are liable to communicate this Section V as well as all other of these Terms to the initial end-user if You are not the initial end-user) and the initial end-user each understand and acknowledge that use of the Package entails certain risks and dangers, especially when used in connection with any other devices or to control any other devices, including risk of electrical shock if not handled properly, or risk of other bodily injuries when controlling or communicating with other devices that have the possibility of causing bodily harm. TO THE MAXIMUM EXTENT PERMITTED BY MANDATORY LAW, YOU ASSUME ALL RISKS ASSOCIATED WITH YOUR USE OF A PRODUCT AND HOLD COMPANY HARMLESS FROM ANY CLAIMS THAT YOU OR ANYONE CLAIMING THROUGH YOU MIGHT ARISE WITH RESPECT TO SUCH RISKS. FURTHERMORE, TO THE MAXIMUM EXTENT PERMITTED BY MANDATORY LAW, COMPANY SHALL NOT BE LIABLE TO YOU OR ANY OTHER PERSON OR ENTITY FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL OR SPECIAL DAMAGES, WHETHER OR NOT COMPANY MAY HAVE BEEN ADVISED OF THE CIRCUMSTANCES THAT MIGHT GIVE RISE TO ANY SUCH DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF BUSINESS OR GOODWILL, LOSS OF REVENUE OR LOSS OF PROFITS. BECAUSE SOME STATES OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR THE LIMITATION OF LIABILITY FOR SUCH DAMAGES, IN SUCH STATES OR JURISDICTIONS, COMPANY'S LIABILITY SHALL BE LIMITED TO THE MAXIMUM EXTENT PERMITTED BY MANDATORY LAW. Although Company will do its best to accommodate your needs if repairs are necessary, the Warranty does not guarantee uninterrupted use of a Product or any part thereof. Finally, to the extent Company incurs costs, including without limitation reasonable attorneys' fees and costs associated therewith, in collecting payments, in enforcing these Terms against You, or in repossessing any Product, You shall be liable to reimburse Company all of such costs, whether or not a suit or proceeding was initiated by Company in connection with such collection or enforcement. A Device may not be (and You shall ensure it is not) used by anyone other than the end-user for the intended use. To the maximum extent permitted by Mandatory Law, any such other use shall void any all warranties that may be claimed against Company and shall relieve Company of any and all other liability of any kind in connection with the applicable Product or any services or other Products or products or parts supplied, including liability for negligence of any kind, other than liability for willful misconduct. To the maximum extent permitted by Mandatory Law, Company's liability to You or to any other person in connection with a Product for any reason or under any theory, shall be limited to the lesser of the price paid for such Product or its then fair value, including, without limitation, tort or product liability, and in no event, except as required by Mandatory Law, shall Company's liability to You or anyone claiming through You exceed in the aggregate, \$5,000. You agree to obtain and maintain sufficient insurance, with a waiver of

subrogation as against Company, to cover all risk of damage, including death or bodily injury, to You or any other user of a Product arising out of any use of any and all Products (such insurance, the “Insurance”)

VI. INDEMNIFICATION. You hereby indemnify Company and its officers, directors, and employees, against and hold them all harmless from any damages, losses, costs, or expenses of any kind (including reasonable attorneys’ fees and costs) arising out of (a) any breach of these Terms by You or anyone who might claim through You, and (b) Your failure to obtain and maintain the Insurance.

VII. SECURITY: If you are acquiring a Device on a rental or trial basis, You hereby grant Company the right to file a UCC-1 statement covering the Device as security for the performance of Your obligations under these Terms and for any payments required to be made by You to Company in connection with the secured Product, and You hereby grant to Company an exclusive, first-priority lien in the Device for the same purpose. Upon demand by Company, You will execute a UCC-1 for Company as the secured party.

VIII. SOFTWARE LICENSE LIMITATIONS: To the extent any software is part of any Device or is installed by Company into the Device or any other device for use with the Device (such software, the “Device Software,” whether or not Company is the owner of such software, and any such Device Software owned or developed by Company, the “Company Software”), then to the maximum extent permitted by Mandatory Law the Device Software is licensed (and not transferred) only to the Device’s end-user, only for the intended use, and only with the Device being purchased or replaced. Without the prior written consent of Company or as otherwise may be required by Mandatory Law, You shall not, and shall not permit anyone else to reverse engineer, decompile, disassemble, or otherwise alter or access (in the object, machine or source code or any other code format), in whole or in part, the Device or any Device Software. You may not, and may not permit others to, (i) decompile, reverse-engineer, disassemble, or otherwise attempt to derive any of the source or other code for the Device Software except and only to the extent that Mandatory Law expressly permits, despite this limitation, (ii) work around any technical limitations in the Device Software. (iii) modify, alter or delete, or create any derivative work of, the Device Software, (iv) use the Device Software’s files and components within another operating system or application running on another operating system , (v) make more than one copy of the Device Software than specified in these Terms except and only to the extent that Mandatory Law expressly permits, despite this limitation, (vi) publish the Device Software for others to copy, or (vii) redistribute, encumber, sell, rent, lease, sublicense, transfer, or otherwise dispose of the Device Software or any parts of or rights therein. Rights to access the Device Software on any device do not give You any right to implement or practice any patents or other intellectual property in software or devices of Company or its affiliates.

IX. SUPPORT AND SERVICE: The Device comes with one-year (from the Date of Sale) of 24/7 remote customer support by email or telephone; provided, however, that the total hours of such support provided by Company shall be limited to 48 hours of aggregate support time in any one such year (note that this limitation also applies to additional purchased years of customer support). The customer support number is 1-855-831-7521 and the customer support email is [neuronode@controlbionics.com](mailto:neuronode@controlbionics.com). Customer support includes assistance with following: the

Device or the NeuroDevice Controller Application, product troubleshooting, threshold refinement, alternative electrode placement, and refining and customizing the settings of the user's accessibility suite.

#### X. SPECIAL PROVISIONS APPLICABLE TO PRODUCT TRIALS AND RENTALS.

You are receiving from Company a Package on a trial basis (this Section X shall also apply to any rentals to the extent CBI agrees to rent a Device to You). To the maximum extent permitted by Mandatory Law, CBI retains title to and ownership of the Package (other than Consumables as of their consumption and to the extent they have been consumed) unless and until title has been transferred in accordance with a purchase contract between you and Company and You may not assign the rental or trial agreement, or further rent or sublease the Device or permit the use of the Device by anyone else. Unless you enter into a such a purchase contract, you are obligated to return the Package (including all unconsumed Consumables) to Company such that CBI receives the returned Package within five (5) days of the end of the trial (or rental) period. The Device must be returned in good working order and in good condition other than ordinary wear and tear, otherwise you shall be liable to Company for payment of the full price of the Package (and You authorize Company to charge your credit card for such price). To the extent that any amount becomes due from You to Company and is paid late, the amount shall be subject to a late payment fee of \$50.00, and the late payments shall accrue daily interest for each day such payment is late at the rate of 20% per annum. Company may waive the late fee in its sole discretion. You shall be liable to Company for any costs of collection incurred by Company in collecting any amounts due to Company from You or in repossessing the Package, including Company's reasonable attorneys' fees and costs, whether or not Company has instituted any action or proceeding in connection with such collection. If You move, You must provide Company with prompt notice of your new address, but in any even within seven days of the move.

#### XI. ARBITRATION:

1. These Terms and any action related thereto or related to any purchase, rental, or trial agreement (such Terms and agreements collectively, the "Contract") between you and Company will be governed by the laws of the State of Ohio applicable to contracts to be entered into and performed there, as well as the Federal Arbitration Act. The following provisions to the extent they require arbitration shall not apply in non-US jurisdictions where Mandatory Law does not permit You to agree to arbitration in terms and conditions such as these Terms, provided, that to the extent permitted by Mandatory Law, in such a case You waive any right to a trial by jury.
2. YOU AND COMPANY AGREE THAT ANY DISPUTE, CLAIM, OR CONTROVERSY ARISING OUT OF OR RELATING TO THIS CONTRACT OR ITS BREACH, TERMINATION, ENFORCEMENT, INTERPRETATION, OR VALIDITY, OR THE DEVICE SOFTWARE OR THE DEVICES OR PRODUCTS OR THEIR USE, POSSESSION OR DISPOSITION (COLLECTIVELY, SUCH DISPUTES, CLAIMS, ETC., "DISPUTES," WHICH INCLUDES, WITHOUT LIMITATION, CLAIMS FOR PERSONAL INJURY, PRODUCT LIABILITY, OR OTHER TORT) WILL BE SETTLED BY BINDING ARBITRATION IN ACCORDANCE WITH THIS SECTION XI, EXCEPT THAT EACH PARTY RETAINS THE RIGHT TO GO TO COURT TO

SEEK ANY TYPE OF RELIEF CONCERNING THE ACTUAL OR THREATENED INFRINGEMENT, MISAPPROPRIATION, OR VIOLATION OF A PARTY'S COPYRIGHTS, TRADEMARKS, TRADE SECRETS, PATENTS, OR OTHER INTELLECTUAL PROPERTY OR PROPRIETARY RIGHTS (ANY SUCH ACTIONS REGARDING INFRINGEMENT, ETC., AN "IP PROTECTION ACTION"). THE EXCLUSIVE JURISDICTION AND VENUE OF ANY IP PROTECTION ACTION WILL BE THE STATE AND FEDERAL COURTS LOCATED IN CINCINNATI, OHIO (AND SUCH COURT SHALL HAVE THE EXCLUSIVE RIGHT TO DETERMINE WHETHER AN ACTION IS AN IP PROTECTION ACTION), AND YOU AND COMPANY EACH HEREBY IRREVOCABLY SUBMIT TO SUCH JURISDICTION, AND WAIVE ANY OBJECTION TO JURISDICTION AND VENUE IN SUCH COURTS AS WELL AS ANY RIGHT TO ANY TRIAL BY JURY. IN ANY IP PROTECTION ACTION, THE COURT SHALL AWARD REASONABLE ATTORNEYS' FEES AND COSTS TO THE PARTY THE COURT DEEMS TO HAVE PREVAILED TO THE EXTENT DEEMED BY THE COURT TO HAVE PREVAILED. YOU ACKNOWLEDGE AND AGREE THAT YOU AND COMPANY ARE EACH WAIVING THE RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS ACTION OR REPRESENTATIVE PROCEEDING. FURTHER, UNLESS BOTH YOU AND COMPANY OTHERWISE AGREE IN WRITING, IN ANY ARBITRATION, THE ARBITRATOR MAY NOT CONSOLIDATE MORE THAN ONE PARTY'S CLAIMS, AND MAY NOT OTHERWISE PRESIDE OVER ANY FORM OF ANY CLASS OR REPRESENTATIVE PROCEEDING. IF THE ARBITRATION PROVIDED FOR IN THIS SECTION XI IS HELD UNENFORCEABLE, THEN THE ENTIRETY OF THIS SECTION XI WILL BE DEEMED VOID, EXCEPT THAT IN SUCH A CASE, EACH OF COMPANY AND YOU, TO THE MAXIMUM EXTENT PERMITTED BY MANDATORY LAW, IRREVOCABLY WAIVE ANY RIGHT TO A TRIAL BY JURY AND ANY RIGHT TO CLAIM INCONVENIENT FORUM, AND IRREVOCABLY SUBMIT TO THE EXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS LOCATED IN CINCINNATI, OHIO. EXCEPT AS PROVIDED IN THE PRECEDING SENTENCE, IN ANY SUCH PROCEEDING THE COURT SHALL AWARD REASONABLE ATTORNEYS' FEES AND COSTS TO THE PARTY THE COURT DEEMS TO HAVE PREVAILED TO THE EXTENT DEEMED BY THE COURT TO HAVE PREVAILED. THIS SECTION XI WILL SURVIVE ANY TERMINATION OF THIS CONTRACT.

3. THE ARBITRATION WILL BE ADMINISTERED BY NAM (NATIONAL ARBITRATION AND MEDIATION) ("NAM") IN ACCORDANCE WITH NAM'S COMPREHENSIVE DISPUTE RESOLUTION RULES AND PROCEDURES (THE "RULES") AND THE FEE SCHEDULE IN EFFECT AT THE TIME THE CLAIM IS FILED WITH NAM. NAM CAN BE CONTACTED AT 800-358-2550. ATT: COMMERCIAL CLAIMS DEPT., TO RESPOND TO ANY QUESTIONS REGARDING THE ARBITRATION PROCESS, AS WELL AS TO REQUEST A COPY OF NAM'S CURRENT COMPREHENSIVE DISPUTE RESOLUTION RULES AND PROCEDURES AND FEE SCHEDULE (OR ALSO VISIT [www.namadr.com](http://www.namadr.com)). THE FEDERAL ARBITRATION ACT WILL GOVERN THE INTERPRETATION AND ENFORCEMENT OF THIS SECTION.
4. The arbitrator will be selected by the parties from NAM's roster of arbitrators. If the parties do not agree upon an arbitrator within seven (7) days of delivery of the demand for arbitration, then

NAM will appoint the arbitrator in accordance with the Rules. The arbitrator will be selected from the Cincinnati area or as close thereto as possible.

5. Unless You and Company otherwise agree in writing, the arbitration will be conducted in Cincinnati, Ohio, or, if possible, via teleconference, to the extent that any hearing is required. The arbitration will be an Arbitration based on Written Submission, conducted solely on the basis of the documents that you and Company submit to the arbitrator unless the arbitrator determines that a hearing is necessary. The arbitrator will allow for the free exchange of non-privileged information relevant to the dispute.
6. The arbitrator's award of damages must be consistent with, and the arbitrator's authority to award is limited by, these Terms as to the types and amounts of damages for which a party may be held liable. The arbitrator may award declaratory or injunctive relief only in favor of the claimant and only to the extent necessary to provide relief warranted by the claimant's individual claim.