

Terms & Conditions

1. Contract

1.1 The term product(s) refers to the subject of this order and therefore may refer to hardware, software, services, parts of products, or any combination of them. Touch Bionics (hereinafter Touch) shall not be bound by this Order unless and until Supplier executes and returns to Touch an unamended acknowledgement copy. Supplier shall be bound by this Order and its terms and conditions when Supplier executes and returns the acknowledgement copy, or when Supplier ships to Touch any of the products ordered herein. No modification of this Order shall be binding upon Touch unless agreed to in writing by an authorized employee of Touch by means of an Order change. Any and all previous agreements or understandings inconsistent with any of the various terms and conditions herein are hereby cancelled and rendered null and void to the extent of such conflict and or inconsistency.

1.2 The invalidity in whole or in part of any provisions hereof shall not affect the validity of any other provision.

1.3 The Supplier shall meet any performance dates for the services specified or notified to the Supplier by Touch.

1.4 This Order and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed and construed in all respects in accordance with the Laws of Scotland and the parties hereby agree that the Scottish Courts will have the exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Order or its subject matter or formation (including non-contractual disputes or claims).

2. Changes

Touch reserves the right at any time to make changes in the specifications, drawings, samples, or other description to which the products are to conform, in the methods of shipment and packaging, or in the time or place of delivery. In such event, any claim for any adjustment shall be mutually satisfactory to Touch and the Supplier but any claim by Supplier for any adjustment shall be deemed waived unless notice of a claim is made in writing within thirty (30) days following Suppliers receipt of such changes. No substitutions of materials or accessories may be made without written consent from Touch. No charges for extras will be allowed unless such extras have been ordered in writing by Touch and the price agreed between both parties. Any change to component, material, delivery, lead times and cost will be provided by the Supplier to Touch Bionics Purchasing Manager by email / writing and authorisation will be required by said person prior to supply of goods. This also applies when the supplier wishes to outsource.

3. Specifications and Inspections

All data submitted to Supplier in connection with the order is hereby incorporated by reference. All orders ordered to Touch' specifications will comply with such specifications current as of the date of this Order unless otherwise authorized by Touch. The products shall be subject to inspection and test by Touch at all times and places, including the period of manufacture for hardware, the period of development for software, and the period of performance for services. If any specification or test is made on the Supplier's premises, the Supplier shall, without additional charge, provide all reasonable facilities and assistance for the safety and convenience of Touch' inspections. Touch reserves the right to reject products which do not conform to the specifications, drawings, and/or other data, or which do not comply with the warranty hereinafter stated. Touch may charge Supplier for the cost of an above normal level of inspection of products if rejection of the shipment based on Touch' normal inspection level endangers production schedules and if the inspected products are necessary to meet production schedules. If rejected after delivery, rejected products will be returned to Supplier at Supplier's risk and expense. Payment for any products shall not be deemed acceptance thereof and if such products are rejected after payment Touch shall be entitled to return the same for full refund. In providing the services, the Supplier shall:

3.1 co-operate with Touch in all matters relating to the services, and comply with all instructions of Touch;

3.2 perform the services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;

3.3 use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with this Order;

3.4 ensure that the services and goods will conform with all descriptions and specifications specified by Touch, and that the goods shall be fit for any purpose expressly or impliedly made known to the Supplier by Touch;

3.5 provide all equipment, tools and vehicles and such other items as are required to provide the services;

3.6 use the best quality goods, materials, standards and techniques, and ensure that all goods and materials supplied and used in the services or transferred to Touch, will be free from defects in workmanship, installation and design;

3.7 obtain and at all times maintain all necessary licences and consents, and comply with all applicable laws and regulations;

3.8 observe all health and safety rules and regulations and any other security requirements that apply at any of Touch's premises;

3.9 hold all materials, equipment and tools, drawings, specifications and data supplied by Touch to the Supplier (Customer Materials) in safe custody at its own risk, maintain the Customer Materials in good condition until returned to Touch, and not dispose or use the Customer Materials other than in accordance with Touch's written instructions or authorisation; and

3.10 not do or omit to do anything which may cause Touch to lose any licence, authority, consent or permission on which it relies for the purposes of conducting its business, and the Supplier acknowledges that Touch may rely or act on the services.

4. Price

4.1 Touch shall not be billed at a price higher than the price charged or quoted by Supplier for the same items unless a higher price is authorized in writing by Touch. Supplier represents that the price charged for the items covered by this Order is the lowest price charged by Supplier to buyers of a class similar to Touch and purchasing in quantities and under circumstances comparable to those specified in this Order. Any price reduction made by Supplier with respect to the items ordered hereunder subsequent to the placement of the Order and prior to Touch's receipt of the items, shall apply to this Order.

4.2 The charges for the services or goods purchased under this Order shall be the full and exclusive remuneration of the Supplier in respect of the performance of the services or delivery of the goods. Unless otherwise agreed in writing by Touch, the charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the services or delivery of the goods.

4.3 The Supplier shall invoice Touch on completion of the services or delivery of the goods. Each invoice shall include such supporting information required by Touch to verify the accuracy of the invoice, including but not limited to the relevant purchase order number.

4.4 In consideration of the supply of the services by the Supplier, Touch shall pay the invoiced amounts stated on the correctly rendered invoice to a bank account nominated in writing by the Supplier.

5. Extras

No charges will be allowed for taxes, import duties, transportation, packaging, packing, returnable containers, documentation, and media unless otherwise agreed. All sales, use, excise, or similar taxes to be paid by Touch must be itemized separately hereon and on invoices. Shipments must be packaged according to specifications or if not covered in specifications, so as to permit efficient handling, provide adequate protection and comply with requirements of carrier. Damage resulting from improper packaging will be charged to Supplier.

6. Warranty

Supplier warrants for a period of thirty six (36) months after date of receipt that the items furnished hereunder will be in full conformity with all specifications and/or other descriptions and will be merchantable and of good quality material and workmanship, free from defects. This warranty shall be in addition to any warranties of broader scope and service warranties and guarantees given by Supplier to Touch, and shall survive inspection, test, acceptance and payment, and shall run to Touch, its successors, assigns, and customers. Touch may at its option either return for full refund or credit, or require prompt correction or replacement of defective or non-conforming items which right shall be in addition to such other rights as Touch may have in law or equity. Return to Supplier of any defective or non-conforming items shall be made at Supplier's expense and no replacement of defective or non-conforming items shall be made unless specified by Touch. Items required to be corrected or replaced shall be subject to this warranty and to the above section 3 to the same extent as items originally delivered under this Order.

7. Delivery

The time or times of delivery specified in this Order are of the essence. Any delay will be excused only if (i) such delay is due to strike, fire, windstorm, act of God, act of public enemy or other unforeseeable cause beyond the control and without fault or negligence of Supplier; and (ii) Supplier shall have notified Touch in writing of the existence of such cause within five (5) days after the commencement of the delay giving all pertinent information concerning such cause. Unless otherwise provided in this Order or requested in writing by Touch, no delivery required hereunder shall be made more than seven (7) days prior to the applicable delivery date and Touch may return earlier deliveries at Supplier's risk and expense or charge to Supplier any additional costs sustained because of the same. If delivery of items is not accomplished at the time or times indicated in this Order, Touch reserves the right without liability and in addition to its other rights and remedies to terminate this Order by notice effective immediately upon receipt by Supplier and to arrange for completion of performance and/or to purchase substitute items elsewhere and charge Supplier with any loss or expense incurred. No provision of this Order for the delivery of items in installments shall be construed as making Supplier's obligation severable. Shipments sent C.O.D. without Touch' written consent will not be accepted and will be at Supplier's risk.

8. Touch Furnished Property

The following definitions shall apply to this paragraph "Touch Tools" are tools, equipment or other property furnished to Supplier by Touch "Non-Unique Tools" are either general tools or special tools made to produce and which have application only to produce the products. "Unique Tools" are tools which have application only to Supplier's method of operation which may be either general or special. Touch Tools shall remain the property of Touch. Unless otherwise agreed Non-Unique Tools which are specifically paid for by Touch, whether itemized separately or included in the price of any product are for use in the performance of the Order, shall be and remain Touch's property. Unless otherwise previously agreed in writing, other Non-Unique Tools and Unique Tools shall be the property of Supplier but any such tools shall be subject to use by Touch in the event Supplier is unable to make deliveries due to a cause set forth in, and in consideration of Section 7. Any property owned by Touch shall be used in fulfilling the requirements set forth in this Order and any similar Orders from Touch, shall be held at the Supplier's risk, and shall be kept insured by the Supplier at the Supplier's expense while in Supplier's custody and control in an amount equal to the replacement cost thereof, with loss payable to Touch. When so instructed by Touch, the Supplier shall deliver any property owned or subject to use by Touch to Touch (or to any other person or company Touch may designate) in good conditions, ordinary wear and tear excepted, and such property shall be subject to repossession or removal by Touch upon Touch' instructions.

9. Confidentiality

Except as otherwise specifically agreed, all information disclosed by Touch to Supplier shall be in confidence and is not, in any way, intended to be for public disclosure. Supplier shall take all reasonable precautions to prevent any such information from being divulged to any person for any purpose other than to perform this Order,

including having recipients acknowledge the confidential status of such information and agreeing to like restrictions on divulging such information. This obligation on confidence shall survive termination of this Order and will continue for three (3) years thereafter. Information presently in the public domain, or which is rightfully received by Supplier from a third party, or information which both Touch and Supplier agree in writing may be disclosed, shall not be considered confidential. Supplier shall not disclose to Touch any information that it deems to be confidential and it is understood that no information received by Touch, including manuals, drawings, and documents, will be of a confidential nature or restrict, in any manner, the use of disclosure of such information by Touch. Supplier agrees that any legend or other notice on or pertaining to any information or materials supplied by it that is inconsistent with the preceding sentence shall create no obligation on the part of Touch. As to publicity, Supplier shall not, without first obtaining Touch' consent in writing advertise or otherwise disclose the fact that Supplier has furnished product and services to Touch under this Order.

10. Rights in Development

This paragraph shall apply if the product is services, or if the hardware or software to be designed or developed and such design or development is paid for by Touch whether itemized separately or included in the price for one or more products to be furnished. Supplier shall disclose and assign on demand, and it does hereby assign, to Touch any and all inventions, improvements or developments each whether patentable or not, which may make or assist in making in the course of such development. Supplier assigns, and agrees hereafter on demand to assign, to Touch all patents, copyrights in connection with any such invention improvement, or development and to do all acts and to execute all instruments which Touch may request Supplier shall cause every appropriate person employed by or associated with it to enter into an agreement under which such person shall disclose and assign to Supplier or Touch relative to assignment and patent protection of such inventions. In addition, all information, ideas, results, and data developed by Supplier as a result of developmental work contemplated by this section shall be transmitted by Supplier only to Touch and shall become the exclusive property of Touch, and shall likewise be regarded by Supplier as confidential for the same period and subject to the same exceptions as are provided in Sec 9. Supplier hereby warrants that it is free to enter into this Agreement as has no obligations or requirements under any other agreement contrary to any of the terms and conditions contained herein.

11. Indemnification for Infringement

Supplier shall promptly investigate and defend, indemnify and keep indemnified, at its own expense, all claims, allegations, suits, actions or proceedings in which Touch or its subsidiaries, or associated companies, agents, their successors, assigns, distributors, dealers, customers or other users of Touch or its subsidiaries or associated companies equipment, software, supplies, or services are made defendants or claimed potential defendants for any infringement, claimed infringement, or alleged inducement of infringement or unauthorized, or unlawful use of any patent, copyright or trademark, wherever registered or issued, or trade secret mask work or property data, or other information resulting from the manufacture, sale, use, or lease, or other disposition of any product purchased under this Order. Supplier further agrees to pay and discharge any all settlements, judgments, or decrees which may be made or rendered in any such suits or proceedings against any such defendants. Supplier shall have the right to settle any such suits, actions or proceedings on terms and conditions of Supplier's own selection, provided they are not in conflict with the terms and conditions provided herein. In the event Supplier fails to promptly investigate and defend or settle as provided hereinabove, then Touch shall, following notification to Supplier have the right from that time forward to have sole control of the defense of any said claim, allegation, suit, action or proceeding and all negotiations for its settlement or compromise and Supplier agrees to pay, as they become due, all of the costs, expenses, and reasonable legal fees incurred and settlements, judgments or decrees which may be made or rendered. This indemnity does not extend to any suit or proceeding which is based upon a patent claim covering a combination in which any product furnished under this Order is merely an element of the claim combined with other devices or elements not furnished hereunder unless Supplier is a contributory infringer, nor does it extend to any product whose infringement is a direct result of Supplier being required to adhere to a specific product design provided to Supplier by Touch. In respect of any goods that are transferred to Touch under this Order, the Supplier warrants that it has full clear and unencumbered title to all such items, and that at the date of delivery of such items to Touch, it will have full and unrestricted rights to transfer all such items to Touch. The Supplier assigns to Touch and free from all third party rights, all intellectual propertyrights in the products or the services. This paragraph 11 shall survive termination of this Order.

12. Liability

In no event shall Touch be liable to Supplier whether in tort (including for breach of statutory duty howsoever arising), contract, misrepresentation (whether innocent or negligent) or otherwise for:

12.1 loss of profits; or

12.2 loss of business; or

12.3 depletion of goodwill or similar losses; or

12.4 loss of anticipated savings; or

12.5 loss of goods; or

12.6 loss of use; or

12.7 loss or corruption of data or information; or

12.8 any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses. Touch's total aggregate liability in contract, tort (including without limitation negligence or breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with this Order shall in all circumstances be limited to the amount actually payable to the Supplier under this Order.

13. Assignment and Subcontracts

Supplier shall not assign this Order or any of Supplier's rights hereunder including but not limited to supplier's right to receive any money due or to become due hereunder, nor shall Supplier enter into a subcontract with any other party for the furnishing of any completed or substantially completed products or services described in this Order without, in each case, Touch' prior written consent.

14. Compliant with Laws

Supplier warrants that the design, construction and quality of any products comply in all respects with all relevant requirements of any Statute, Statutory Rule or Order of Regulations which may be in force at the time, including, without prejudice to the generality of the foregoing the requirements of the Health and Safety at Work, etc. Act 1974 and any Regulations, Rules or Orders made thereunder and undertakes to indemnify Touch against any loss, damage, liability, costs or expenses which Touch may suffer or incur by reason of any breach of said warranty. Any provision which is required to be part of this Order by virtue of any such Statute, Statutory Rule or Order or Regulations is incorporated by reference.

15. Reservation of Rights

No failure by either party to insist upon strict compliance by the other party with any of the terms, provisions or conditions of this Order, in any instance, shall be construed as a waiver or relinquishment by either party of the other party's right to insist upon strict compliance therewith in the future.

16. Termination

Touch may terminate this Order in whole or in part at any time upon Touch' written notification to Supplier:

16.1 for any reason at Touch's convenience and in such case the extent of Touch's liability shall be (a) if the product is software or services, to pay the portion of the contract price as the work completed bears to the whole, (b) if the product is hardware, to pay the cost of the existing "finished goods" inventory, but no more than required to fulfill the next delivery schedule within the thirty (30) days following the date of termination, plus the existing "work-in-process" inventories required to fulfill an additional thirty (30) days of deliveries, except that there shall be no liability for inventory in either category which is readily useable or resalable. "Finished goods" shall mean goods that have passed final acceptance test and are waiting delivery. "Work-in-process" shall mean material in varying stages of completion with some degree of labor applied and/or individual piece parts and/or raw material in a stage of completion no more than necessary to meet delivery schedules.

16.2 for any default by Supplier involving (a) Supplier's failure to develop the product, deliver the products, and/or render the services specified herein within the time designated herein, or (b) Supplier's failure to make progress in the performance of its obligations under this Order to the satisfaction of Touch. With respect to any default mentioned in 16.2 hereof, except a delivery failure as described in Section 7 hereof, Touch' right to terminate shall be conditional upon Supplier's failure within 10 (10) days, after receipt of Touch' notification to provide a remedy satisfactory to Touch to cure such failure or noncompliance.

16.3 in the event of the Supplier becoming insolvent, when he has been adjudged bankrupt or executed a trust deed for behoof of or made a composition, contract or arrangement with his creditors or, if a company, when a winding up order or a resolution for a voluntary winding up has been made or a Receiver/Administrator has been appointed. In the event of termination by Touch due to Supplier's default pursuant to 16.2, or for any reason in 16.3, Touch shall have no

liability to Supplier as a result of such termination. In the event of termination for any reason, Touch may further notify Supplier that all right, title, and interest in and to all or any portion of materials acquired by Supplier for the performance of this Order, work-in-process, and/or completed products specified in such notice shall pass immediately to Touch upon payment therefor. Touch shall have the right to enter upon the premises where such property (and/or any Touch property described in Section 8 hereof) may be located and take possession thereof.

16.4 Touch's rights under this Order are in addition to its rights and remedies implied by statute and common law.