

TERMS & CONDITIONS

1. **Definitions.** The term “**Agreement**” shall mean these Terms and Conditions, Harmonic Bionics’s quality requirements (a copy of which is available to Supplier upon request), the content of any written or electronic purchase order or material release issued by Harmonic Bionics to Supplier that references these Terms & Conditions, and any exhibits or other incorporated documents referenced on the face of the Purchase Order. The term “**Harmonic Bionics**” shall refer to Harmonic Bionics Inc. that issued the purchase order or material release to the Supplier. The term “**Supplier**” shall mean the entity or individual to whom Harmonic Bionics has issued the purchase order or material release. The term “**Product(s)**” shall refer to the materials, supplies, items and equipment covered by this Agreement. The term “**Services**” shall refer to the work and/or Services covered by this Agreement or performed during the course of performance of this Agreement.
2. **Acceptance.** This Agreement must be accepted in writing by Supplier by returning a signed acknowledgment copy of this Agreement. If Supplier fails to accept in writing, any conduct by Supplier that is in accordance with the existence of this Agreement shall constitute an acceptance by Supplier of this Agreement. Any terms proposed in Supplier’s acceptance of Harmonic Bionics’s offer that add to, vary from, or conflict with these Terms and Conditions are hereby rejected and shall not apply. If this Agreement has been issued by Harmonic Bionics in response to an offer, and if any of these Terms and Conditions are additional to or different from any terms of such offer, then the issuance of this Agreement by Harmonic Bionics shall constitute an acceptance of such offer subject to the express condition that Supplier assents to these Terms and Conditions, and Supplier shall be deemed to have so assented unless Supplier notifies Harmonic Bionics to the contrary in writing within ten (10) business days of receipt of this Agreement. Harmonic Bionics’s consent to engage in the activity contemplated by this Agreement is expressly conditioned on Supplier’s unaltered acceptance of the terms and conditions set forth in this Agreement. Any preprinted terms and conditions provided or referenced by Supplier, including terms and conditions contained on a website or other electronic medium, shall be void and of no force and effect. Any terms proposed in Supplier’s acceptance of Harmonic Bionics’s offer that add to, vary from, or conflict with these Terms and Conditions are hereby rejected and shall not apply.
3. **Entire Agreement.** Except as expressly set forth in a written agreement signed by the Parties, this Agreement sets forth the complete agreement between the parties with respect to the subject matter hereof, and supersedes any and all prior or contemporaneous oral or written communications relating thereto. The foregoing shall not apply to a written Quality Agreement or Change Control Agreement issued by Harmonic Bionics and expressly agreed to by the parties. Any reference to a proposal, quotation or other communication by Supplier shall, unless indicated to the contrary, be limited to the description of the Products or Services and by the terms set forth or incorporated by reference herein.
4. **Prices.** Except as otherwise provided in any exhibit attached to this Agreement, the price(s) set forth herein are firm, and are not be subject to increase.
5. **Taxes.** No extra charges of any kind, including without limitation transportation charges, shall be allowed unless agreed to in writing by Harmonic Bionics. Harmonic Bionics shall pay all sales or use taxes due on the transactions hereunder or provide Supplier customary proof that the transactions are exempt from such taxes; provided, that Supplier shall pay all applicable excise taxes imposed on Supplier including, without limitation, excise taxes imposed on Supplier as the manufacturer or importer of a “taxable medical device”, under Section 4191 of the Internal Revenue Code and its implementing regulations. Invoices shall separately identify any tax that is the responsibility of Harmonic Bionics hereunder (including value added taxes as exclusively net extra) and shall include either Supplier’s sales tax or use tax permit number. Supplier shall pay any other taxes and charges, including without limitation, assessments or fines arising from Supplier’s performance of the transactions under the Agreement, including taxes based upon Supplier’s net income and penalties or fees imposed due to failure to file or pay collected sales or use taxes, the cost of which is included in the price of the Products and/or Services and Supplier shall not be entitled to additional compensation therefore. In all instances where Harmonic Bionics purchases Products using a delivery term requiring importation by Harmonic Bionics, Harmonic Bionics shall have the sole and exclusive right to claim and apply for all duty drawbacks and Supplier shall reasonably assist Harmonic Bionics in making any such duty drawback claims.
6. **Invoices.** All invoices shall be submitted and accompanied by a copy of the bill of lading if on collect freight shipments or if otherwise required by law, and by a prepaid freight bill if all or any part of the freight is included on the face of the invoice. Harmonic Bionics shall have no obligation to pay any Supplier invoice submitted more than (90) days after (i) completion of Services and/or (ii) delivery of Products hereunder. In addition to any other information specified elsewhere herein, invoices and packing slips shall contain the following information: Invoice/Packing slip number, Purchase Order number, item number, description of Products and Services, sizes, quantities, weight, unit prices and extended totals, date that the Product(s) shipped, Supplier’s packing slip number, any applicable taxes chargeable and any extraordinary charges that have been approved by Harmonic Bionics.
7. **Payment.** In the absence of payment terms agreed to in writing, Harmonic Bionics shall make payment for Products and Services within 30 days, beginning from receipt of invoice, delivery and acceptance of the Products or complete performance of the Services.
8. **Delivery.** Time is of the essence and the Products must be received or Services performed on the dates and at the destination(s) set forth in the purchase order or material release. If Supplier fails to meet any such delivery date without notice, Harmonic Bionics may, without limiting its other rights and remedies: (i) terminate all or any portion of the Agreement, or order; and/or (ii) direct expedited routing, or charge excess costs incurred thereby to Supplier. All rejected or over-run Products and material with Harmonic Bionics’s printing or identification must be destroyed by Supplier at Supplier’s expense and not sold as surplus.
9. **Packaging and Shipment.**
 - (a) Products shall be packed and shipped in accordance with this Agreement, any specifications incorporated herein, Harmonic Bionics’s instructions, and good commercial practice to ensure that no damage shall result during transportation. Supplier guarantees that the articles comprising each shipment or other delivery hereunder made by Supplier to Harmonic Bionics is, as of the date of such shipment or delivery, in compliance with all applicable laws, rules, and regulations. Supplier shall protect any item or part thereof that may deteriorate during shipment or storage. Supplier shall indicate any back-ordered items on packing slip and invoices. Signed proof of delivery does not constitute or imply that the contents of the boxes used for delivery contain all items ordered by Harmonic Bionics. Signed receipt acknowledges acceptance of the number of specified boxes only and not the contents. Any subsequent order placed by Harmonic Bionics as a result of items missing from a delivered shipment must be first credited then re-billed.
 - (b) If required by the specifications from Harmonic Bionics, Supplier shall include with each shipment a certificate of conformance (“Certificate of Conformance”) that includes the following:
 - Supplier Name
 - Harmonic Bionics Part Name, Number and Revision Level
 - Harmonic Bionics Purchase Order Number and, if Applicable, Release Number
 - Supplier’s Unique Lot Identifier (i.e. Lot Number, Date Code, Sales Order Number, or Other Traceable Number), if Applicable
 - Quantity Shipped
 - Date Manufactured
 - Statement of Conformance to Harmonic Bionics Specifications Approved by an
 - Authorized Quality Representative (Including Representative’s Name and Title)All documentation to support the validity and/or verification of the certified attributes referenced in each Certificate of Conformance must be maintained by Supplier and accessible within a 3 business day time period at the request of Harmonic Bionics.
10. **Freight.** Unless otherwise specifically provided Supplier shall be responsible for delivery of the Products utilizing Harmonic Bionics’s freight carrier of choice.
11. **Inspection.**

Notwithstanding any prior inspections or payments hereunder, all Products and Services shall be subject to final inspection, which may include measurement, testing or examination, and acceptance at Harmonic Bionics’s facility within a reasonable time (but not less than 45 days) after receipt at destination. Any inspection by Harmonic Bionics does not relieve Supplier of any obligations or liabilities under this Agreement.

 - (a) If any Products or Services delivered do not meet all of the requirements of this Agreement, Harmonic Bionics shall have the right to reject such Products or Services and return such Products at Supplier’s expense. Harmonic Bionics may elect to reject the entire Products or Services tendered even if only a portion thereof is nonconforming. If Harmonic

- Bionics elects to accept nonconforming Products or Services, Harmonic Bionics, in addition to its other remedies, shall be entitled to an appropriate reduction in price. Payment for any Products or Services shall not be deemed an acceptance thereof.
- (b) Supplier agrees to undertake such quality control and inspection procedures in accordance with an executed active Supplier Quality agreement, if such an agreement has been signed and established between the Supplier and Harmonic Bionics.
12. Warranty.
- (a) Product Warranty. Supplier warrants that, unless a different period is expressly set forth on a purchase order issued by Harmonic Bionics, for a period of twelve (12) months from the date of delivery of the Products that all Products furnished hereunder shall: (i) be free from latent and patent defects in workmanship, material, manufacture, and design (where design is Supplier's responsibility); (ii) comply with the requirements of this Agreement, including all drawings, specifications and or quality plans incorporated herein and samples and warranties furnished by Supplier; (iii) be merchantable and safe for consumer use, and fit for the use intended by Harmonic Bionics; (iv) be free and clear of any lien, security interest or other adverse claim against title; (v) comply with the laws agreed in a Supplier Quality Agreement (if such an agreement has been signed and established between the Supplier and Harmonic Bionics.) (vi) not be adulterated or misbranded within the meaning of any State food and drug laws or the Federal Food, Drug and Cosmetic Act, or not be an article which may not under the provisions of sections 510, 513, 515 or 801 of the Act or any other applicable Federal, state or local laws, be sold, legally transported or introduced into interstate commerce; (vii) not infringe, including without limitation their sale or use alone or in combination, any United States or foreign patents, trademarks, trade secrets, copyrights or proprietary rights of any third party.
- (b) Additional Warranties. Supplier represents and warrants, to the extent applicable to the Supplier that:
- (i) all Products and Services furnished hereunder shall be manufactured, inspected and supplied in accordance with all domestic and foreign federal, state, and local laws, statutes, acts, ordinances, rules, codes, standards, guidelines and regulations applicable to the labeling, re-labeling, packaging, processing, assembly, record creation, record retention, record modification, record transmission (including by electronic means), storage, handling, transport (including exportation and importation of Products within the United States, or to or from the United States and any other country), and reporting of medical devices, in accordance with an executed Supplier Quality Agreement (if such an agreement has been signed and established between the Supplier and Harmonic Bionics.).
- (ii) Supplier and its affiliates and related entities are not debarred, suspended, proposed for debarment or otherwise excluded from contracting with the Federal Government or any State or local government agency.
- (c) The foregoing warranties are in addition to all other warranties, expressed or implied, and shall survive any delivery, inspection, acceptance, and payment by Harmonic Bionics.
- (d) If any Products or Services furnished hereunder do not meet the warranties set forth in Section 12(a), Harmonic Bionics may, at its option: (i) require Supplier to correct, any defective or nonconforming Products or Services by repair or replacement; (ii) return such defective or nonconforming Products at Supplier's expense to Supplier and recover from Supplier the price thereof or, offset such sums against amount due Supplier from Harmonic Bionics; (iii) correct the defective or nonconforming Products or Services itself and charge Supplier with the cost of such correction; or (iv) accept the defective or nonconforming Products or Services at a reduced price.
13. Changes. Harmonic Bionics reserves the right at any time to change a purchase order in writing, and if such change causes an increase or decrease in price or delivery of Products or Services, an equitable written adjustment shall be made.
14. Confidentiality. In its performance of this Agreement, Harmonic Bionics may disclose to Supplier or Supplier may have access to certain Confidential Information of Harmonic Bionics. "**Confidential Information**" means trade secrets (as defined by applicable laws), any data, reports, computer programs or models and related documentation, business or research plans, specifications, drawings, designs or information transmitted by Harmonic Bionics to Supplier in connection with this Agreement, and any other information that is of value to Harmonic Bionics and is treated as confidential, including without limitation, the fact that Supplier has furnished or contracted to furnish to Harmonic Bionics the Products or Services covered by this Agreement including the terms of this Agreement. All Confidential Information of Harmonic Bionics shall remain the property of Harmonic Bionics. Supplier shall keep all Proprietary Information of Harmonic Bionics confidential and use such information only as necessary to fulfill Supplier's obligations pursuant to this Agreement. All originals, copies, summaries and derivations of Confidential Information in whatever form shall be returned to Harmonic Bionics or destroyed upon Harmonic Bionics's request.
15. Tooling and Equipment. Design, tools, jigs, dies, fixtures, templates, patterns, drawings, and other information and things (herein collectively, the "**Tools**") paid for or furnished by Harmonic Bionics shall be Harmonic Bionics's property and Supplier shall not encumber or dispose of them in any way. Supplier shall maintain such Tools in proper working condition. The Tools shall be used exclusively for Supplier's performance of its obligations hereunder. To the extent any equipment owned by Harmonic Bionics is placed at Supplier's facility to be used in connection with Supplier's performance of its obligations hereunder, in addition to the foregoing terms and conditions, such equipment and Supplier's use thereof shall be subject to the terms and conditions set forth in Harmonic Bionics's Equipment Placement Terms (available upon request).
16. Work on Harmonic Bionics's Premises: Occupational Health Services. If Services are to be performed on Harmonic Bionics's premises, Supplier shall comply with all applicable safety laws and Harmonic Bionics's then current safety and other applicable regulations. Supplier shall provide Harmonic Bionics with a complete list of all chemicals, hazardous materials, and ingredients in the composition of Products or used in the performance of the Services hereunder and a copy of the Material Safety Data Sheet for such chemicals and hazardous materials. The submission of such list by Supplier shall not relieve Supplier of exclusive responsibility for the safe transportation, use, storage, and disposal of such materials prior to acceptance by Harmonic Bionics. All chemicals and hazardous materials brought by Supplier to Harmonic Bionics's premises shall bear a label stating the identity of the chemical or material and the hazards associated therewith.
17. Indemnity; Insurance.
- (a) Supplier shall defend, indemnify and hold Harmonic Bionics, its affiliated companies, and their respective shareholders, officers, directors, employees, agents, successors, and assigns harmless from and against any and all claims, suits, actions, liabilities, losses, costs, reasonable attorneys' fees, expenses, judgments or damages, whether ordinary, special or consequential arising directly or indirectly from or in connection with (i) the acts, negligence, omissions or willful misconduct of Supplier; (ii) Products or Services supplied hereunder; (iii) a breach of any of Supplier's warranties or any other term and condition of this Agreement; (iv) Supplier's negligent, unauthorized or wrongful acts or omissions with regard to the transportation, use, handling, disposal, processing or installation of regulated materials; (v) a claim that any Products or Services furnished hereunder infringe upon or misappropriate any patent, copyright, trademark, trade secret or other intellectual property interest of another; (vi) a claim of any lien, security interest or other encumbrance made by a third party; (vii) a violation of federal or state law, regulation, statute or ordinance; (viii) a recall or product field action involving the Products or Services to the extent they relate to or arise out of a breach of Supplier's warranties or any other term and condition of this Agreement; or (ix) failure to comply with the Confidentiality obligations set forth herein. Notwithstanding the foregoing, Supplier shall not hold Harmonic Bionics harmless from claims arising out of the negligence, reckless actions or willful misconduct or malfeasance of Harmonic Bionics, its officers, agents, or employees or any person or entity not subject to Supplier's supervision or control.
- (b) Without limiting Harmonic Bionics's rights and remedies hereunder, if Harmonic Bionics believes that the Products or Services supplied hereunder are likely to be determined to be an infringement or misappropriation of a patent, copyright, trademark, trade secret, or other proprietary right, Harmonic Bionics may require Supplier to: (i) replace such Products or Services with equivalent functionality; or (ii) modify such Products or Services with equivalent functionality to make them non-infringing.
18. Termination.
- (a) Harmonic Bionics may, at any time, terminate this Agreement, in whole or in part, without cause, upon written notice to Supplier. Upon any such termination Supplier shall, to the extent specified by Harmonic Bionics, stop all work on this Agreement, and cause its suppliers and subcontractors to stop work. Charges for any such termination of this Agreement shall be limited to actual non-recoverable costs incurred by Supplier that Supplier can demonstrate were properly incurred for the Products or Services hereunder prior to the date of termination. In no event will Harmonic Bionics reimburse Supplier for anticipated profits or revenue or other economic loss for undelivered Products or unperformed Services. Any Products for which Supplier is reimbursed shall become Harmonic Bionics's property.

- (b) Harmonic Bionics may terminate this Agreement for breach of Supplier, in whole or in part, if Supplier: (i) fails to make delivery of the Products or perform the Services within the time specified herein, any purchase order, or material release; or (ii) fails to replace or correct defective Products or Services in accordance with the provisions of this Agreement; (iii) breaches any warranty set forth in Section 12(b); (iii) becomes insolvent, files or has filed against it a petition in bankruptcy, or makes an assignment for the benefit of creditors; or (iv) otherwise fails to comply with the requirements of this Agreement.
- (c) Any such termination shall not relieve Supplier from any liability hereunder.
19. Remedies. Harmonic Bionics's remedies shall be cumulative and remedies herein specified do not exclude any remedies allowed by law or in equity. Waiver of any breach shall not constitute waiver of any other breach of the same or any other provision.
20. Harmonic Bionics Property. All drawings, artwork, data, material, supplies, equipment, tooling, dies, molds, fixtures, and patterns furnished or paid for by Harmonic Bionics shall be Harmonic Bionics's exclusive property, and shall be used by Supplier only in performance of this Agreement. Such property, while in Supplier's custody and control, shall be held at Supplier's sole risk and, upon Harmonic Bionics's request, shall be returned to Harmonic Bionics in proper working condition, normal wear and tear excepted and subject to Harmonic Bionics's Equipment Placement Terms (available upon request).
21. Assignability and Subcontracting. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. Notwithstanding the foregoing, neither this Agreement nor any interest therein shall be assigned, delegated subcontracted for, or otherwise transferred by the Supplier, except upon the prior written consent of Harmonic Bionics. Any assignment or transfer without such consent shall be void and of no effect. Regardless of Harmonic Bionics's consent to any of the foregoing, Supplier shall remain liable for the performance of all such obligations and shall ensure that any permitted subcontractor or non-employee reads and understands the terms of this Agreement. Harmonic Bionics may assign its rights or obligations under this Agreement to any successor without Supplier's consent.
22. Survivorship. All provisions, representations and warranties contained herein which by their nature are required or intended to be observed or performed after termination of this Agreement will survive its termination.
23. Release of Information. Supplier shall not release any statement, advertisement, information, or publicity referring to Harmonic Bionics without Harmonic Bionics's prior written approval.
24. Applicable Law. This Agreement shall be governed by and construed according to the laws of the State of Texas as applicable to contracts made and to be performed in that state, without regard to conflicts of laws principles of such state. Suit to interpret or enforce the terms of this Agreement or to resolve any dispute related to this Agreement must be brought before a court of competent jurisdiction, state or federal, located within the State of Texas.
25. Independent Contractor. Supplier will perform this Agreement as an independent contractor, and this Agreement will not be construed to create between the parties the relationship of principal and agent, joint-venturers, co-partners, employer and employee, franchiser and franchisee or any other similar relationship, the existence of which is expressly denied by each party. Supplier represents that Supplier is engaged in similar business for other clients. Supplier will conduct its business under its own name as an independent contractor, and is hereby expressly prohibited from holding itself out as an employee, agent, partner or representative of Harmonic Bionics. It is agreed that any person employed by Supplier to perform hereunder will not be deemed to be an employee of Harmonic Bionics, and Supplier and its suppliers, subcontractors, agents or representatives will not be, or represent themselves to be, officers, employees, agents or representatives of Harmonic Bionics and will not bind, or attempt to bind, Harmonic Bionics to any agreement, liability or obligation of any nature.
26. Severability. These Terms and Conditions shall be deemed severable. In the event that any provision is determined to be unenforceable or invalid, such provision shall nonetheless be enforced to the fullest extent permitted by applicable law, and such determination shall not affect the validity and enforceability of any other remaining provisions.
27. Change Control. Supplier is aware that Harmonic Bionics is a producer of medical devices as defined by the Code of Federal Regulations, 21 CFR Part 820. Supplier acknowledges that it produces critical components, subparts or finished devices for Harmonic Bionics. Where the product design and specifications are owned by Harmonic Bionics:
- (a) It is understood that only Harmonic Bionics can establish or change product specifications, performance characteristics, quality standards, tolerances or any other aspect of the Products, or components thereof.
- (b) Supplier will not make any change to the Product, process, materials, formulation, packaging, labeling, software, environment conditions, quality assurance processes, equipment, production location or subcontractor that could in anyway affect the quality of the finished device, without prior written notification and approval from Harmonic Bionics.
28. Documents located online or websites. The Terms & Conditions contained in documents located online or on websites which are referred to or incorporated into orders may be changed and amended from time to time by Harmonic Bionics. Applicable shall be those terms and conditions being valid as of the date of the order.