



January 19, 2018

TERMS AND CONDITIONS OF SALES OF PROTOFAB, INC.

1. **PAYMENTS.** Unless otherwise agreed to by ProtoFab in writing, all amounts payable hereunder shall be due to ProtoFab within twenty (20) days of the invoice date, time being of the essence. Late payments shall bear interest at the rate of 18% per annum or the highest rate permitted by law; whichever is less. All prices shown are net, and, in addition to the price of goods, Customer shall pay all expenses including taxes, insurance, freight, carriage and warehousing.
2. **TAXES AND PRICING.** All prices quoted are good for 30 days from date of proposal. Prices are exclusive of taxes, prevailing wage, after hour rates, weekend rates and holiday rates unless stated. Customer shall pay all taxes resulting from transactions, including without limitation occupation, property, excise, sales or use tax, but excluding any taxes based on the income of ProtoFab.
3. **SHIPMENT.** (a) Scheduled shipment date is an estimate only. On or after the scheduled date, Customer shall accept shipment upon notification by ProtoFab; or, if Customer refuses shipment, then ProtoFab is authorized to (1) have the goods transported and warehoused, at Customer's expense and risk, which act shall constitute shipment to Customer in which event ProtoFab may declare as immediately due all amounts due upon shipment, or, if any amounts are financed by ProtoFab, may declare the monthly installment payments to commence thirty (30) days from the date of such shipment to the warehouse, or (2) at ProtoFab option, defer shipment. (b) ProtoFab may make partial shipments hereunder and may invoice for each such partial shipment separately. Each partial shipment will be deemed to be separate sale; however, delay in delivery of any partial shipment will not relieve Customer of its obligation to accept delivery of remaining shipments. (c) ProtoFab shipping weights will govern for each shipment or partial shipment. Should Customer dispute the shipping weight of any shipment or partial shipment, Customer will promptly notify ProtoFab in writing of the reasons for such dispute and provide to ProtoFab all necessary documentation to substantiate the difference.
4. **TITLE/RISK OF LOSS/INSURANCE.** Title to and risk of loss of the goods shall pass from ProtoFab to the Customer when the goods or components parts whether manufactured by ProtoFab or other supplier are placed in the possession of the carrier for shipment to Customer. Customer shall provide insurance to be for no less than the total amount owing to ProtoFab, with loss first payable to ProtoFab.
5. **ACCEPTANCE OF GOODS.** Customer shall inspect or test all goods upon receipt. Customer shall be deemed to have effected final acceptance of the goods within fifteen (15) days from the date of the initial shipment, unless written notice is received by ProtoFab within such period. In any case, the goods will be deemed accepted on the date when used or otherwise placed in commercial operation.
6. **WARRANTY.** (a) ProtoFab warrants that title to the goods sold shall be free from any encumbrance, and will conform to the description contained on ProtoFab's invoice. (b) **ProtoFab disclaims any implied warranty of merchantability or fitness for a particular purpose. There are no representations or warranties except as provided in writing signed by an authorized officer of ProtoFab.** (c) Customer is responsible for the designation and selection of product sold by ProtoFab. Customer shall hold ProtoFab harmless and indemnify and defend ProtoFab (including its affiliates, assigns, directors, officers, employers, agents, and representatives) for any claims arising out of or relating to the design, specification or use of product(s) sold by ProtoFab to Customer.
7. **REMEDY.** ProtoFab's sole responsibility and liability and Customer's exclusive remedy under this agreement shall be limited to the repair or replacement of goods (f.o.b. ProtoFab's shipping point) not conforming to the warranty, or, at ProtoFab's option, to the return of the goods and refund of moneys paid thereon, without interest, provided Customer is not in default hereunder. **IN NO EVENT SHALL PROTOFAB BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES OR ATTORNEYS' FEES.** ProtoFab's obligation hereunder is subject to receipt of written notice of defect from Customer within thirty (30) days after such alleged defect shall be reasonably apparent to Customer.

8. **RETURNS.** Returned goods will be accepted only if ProtoFab has given prior written consent. Handling, inspection, restocking and invoicing charges also may be assessed against Customer. All returns allowed must be shipped at Customer's expense and must be in excellent resale condition. Material cut and/or fabricated to Customer's specifications is not returnable.
9. **DELAY OR NONPERFORMANCE.** ProtoFab shall not be liable for failure or delay in performance hereunder due in whole or in part to strikes, work stoppages, fires, acts of terrorism, accidents, wars, rebellions, civil commotion, public strife, acts of any government, whether legal or otherwise, acts of public enemies, forces nature, inability to secure or delay in securing transportation, inability to obtain or delays in obtaining goods, materials, or qualified labor, or any other causes beyond ProtoFab's reasonable control; this specifically includes delays or inability to obtain product because of the actions of ProtoFab's suppliers.
10. **DEFAULT.** In the event of Customer's refusal to accept shipment or other default, ProtoFab, at its discretion and option, shall be entitled to retain all money paid by Customer on account as liquidated damages. If Customer fails to make any payments when due, or if there is a breach of any covenant or agreement by Customer, or if ProtoFab deems itself insecure, then Customer shall be deemed in default and ProtoFab shall have, at its option, the right to take immediate possession of the goods, and/or declare all unpaid amounts immediately due and payable and/or suspend shipments to Customer. ProtoFab shall be entitled to set off any amount owed by Customer or any of Customer's related entities against any amount payable to ProtoFab in connection with any unpaid monies due to ProtoFab. ProtoFab shall have all the rights and remedies of a secured party under the Uniform Commercial Code in addition to all other rights as established herein, which rights and remedies shall be cumulative. Waiver by ProtoFab of any breach or default shall not constitute a waiver of any subsequent breach or default.
11. **EQUIPMENT.** (a) Any equipment, including jigs, dies and tools (which ProtoFab acquires for use exclusively in the production of goods for Customer) will be and remains ProtoFab's property and in ProtoFab's possession and control; and any changes by ProtoFab are permissible. (b) Any material or equipment owned or furnished by Customer to ProtoFab will be carefully handled and stored by ProtoFab while in ProtoFab's possession. When for eighteen (18) consecutive months no orders acceptable to ProtoFab are received from Customer for goods to be made from any such equipment or materials, ProtoFab may, by written notice to Customer, request Customer to make disposition thereof at Customer's expense. If Customer fails to comply with such notice, ProtoFab may make such use or disposition of said materials or equipment as it desires, without liability or obligation to Customer.
12. **CANCELLATION.** Upon receipt of written notice from Customer, ProtoFab shall cancel any orders as instructed, subject to ProtoFab's (or its subcontractors) right to continue processing raw or finished material to the point at which processing can be halted with the least disruption and cost to ProtoFab. Customer shall be responsible for all costs associated with the cancellation and completion of processing of material.
13. **ACCEPTANCE.** These Terms and Conditions shall be deemed binding on Customer by its purchase of products from ProtoFab. These Terms and Conditions may only be modified if in writing and signed by an authorized officer of ProtoFab; each of these terms and conditions shall remain in effect unless the provision(s) are explicitly contradicted by the aforesaid writing. If Customer submits a form with contrary terms and conditions, such order shall be considered as confirmation only and shall in no way amend, prevail over, supplement or supersede any provision herein. These TERMS AND CONDITIONS may be superseded or revised by ProtoFab's ANNUAL TERMS AND CONDITIONS.
14. **GENERAL.** ProtoFab may assign its rights and obligations under these Terms and Conditions. If Customer changes corporate status, both Customer and its successors continue to be bound by these Terms and Conditions of Sale, but ProtoFab reserves its rights under paragraph 10. No prior representation, affirmation or agreement shall be enforceable unless set forth herein.
15. **DISPUTE RESOLUTION/GOVERNING LAW.** Any and all disputes between ProtoFab and Customer shall be determined subject to Nevada law, and its state or federal courts shall have exclusive jurisdiction. The parties hereto agree to the personal jurisdiction of the Nevada courts, and that attorney's fees and cost shall be awarded to the prevailing party in any litigation. Customer must institute any action against ProtoFab within one year after Customer's claim arises, or such claim shall be barred notwithstanding any statutory limitation to the contrary.

Company Name: _____ **Date:** _____

Signature: _____ **Print Name:** _____