

ThermoFab Operating Company, LLC

ENCLOSURES, TOOLING AND SERVICE TERMS AND CONDITIONS

1. Limited Warranty

1.1 Enclosures Limited Warranty: ThermoFab Operating Company, LLC d/b/a ThermoFab (“ThermoFab”, “Producto” or “Service Provider”) warrants that any enclosures (collectively, “Enclosures”) delivered by Producto will be free from defects in material and workmanship (the “Enclosures Limited Warranty”) as hereinafter provided. Note: Enclosure is defined as a full enclosure or any part of a complete enclosure. This Enclosures Limited Warranty shall be effective for a period of one (1) year from the date of delivery of any Enclosure and any refurbished or replacement Enclosure covered by this Proposal. At the conclusion of the Enclosures Limited Warranty period, Producto shall be under no further obligation to the Customer in connection with this Enclosures Limited Warranty. Producto’s sole obligation and Customer’s exclusive remedy hereunder is limited to the repair or replacement of any Enclosure which Producto determines, in its sole discretion, is defective. In its sole discretion, Producto may replace a defective Enclosure with a new or rebuilt replacement Enclosure. The ordinary and intended consumption, depletion or wear of any Enclosure shall not be deemed a defect for purposes of this Enclosures Limited Warranty. This Enclosures Limited Warranty shall apply to any replacement Enclosure for the lesser of one (3) year or the remainder of the original Enclosures Limited Warranty period applicable to replacement Enclosure at issue. For purpose of this Enclosures Limited Warranty, a “rebuilt” replacement Enclosure is one that has been returned to its original specifications. This Enclosures Limited Warranty shall be VOID and Producto shall be under no further obligation to Customer hereunder in cases of operator error, accident, neglect, misuse, failure to maintain and/or service an Enclosure or a machine to which the Enclosure is affixed. This Enclosures Limited Warranty shall be VOID and Producto shall be under no further obligation to Customer hereunder if the machine or machines to which the Enclosure is now affixed is not operated in accordance with the manufacturer’s instructions or specifications, and/or Customer causes a defect as a result of Customer’s installation and/ or acts outside of Producto’s control such as casualty, riots, rebellions, pandemics, government action, accidental explosions, fire, floods, storms, natural disasters, acts of God, terrorism, and similar occurrences, or any other use of an Enclosure other than the normal use of such Enclosure for its intended purpose.

1.2 Tooling Limited Warranty: ThermoFab Operating Company, LLC d/b/a (“ThermoFab “Producto” or “Service Provider”) warrants that any tooling (collectively, “Tooling” procured from Producto will be free from defects in material and workmanship (the “Tooling Limited Warranty”) as hereinafter provided. This Tooling Limited Warranty shall be effective for a period of three (3) years from the date the Tooling is put in use, regardless of whether it has been modified, repaired, improved, or replaced. At the conclusion of the Tooling Limited Warranty period, Producto shall be under no further obligation to the Customer in connection with this Tooling Limited Warranty. Producto’s sole obligation and Customer’s exclusive remedy hereunder is limited to the repair or replacement of any Tooling which Producto determines, in its sole discretion, is defective.

1.3 Enclosures Services Limited Warranty: Producto warrants that any design, engineering, repairs, and services (collectively, “Services”) will be performed in a good and workmanlike manner consistent with applicable industry standards for similar services. This Services Limited Warranty will be in effect for a period of three hundred sixty-five (365) days from the completion of any Services. As Customer’s sole and exclusive remedy and Producto’s entire liability for any breach of the Services Limited Warranty, Producto will, at its sole option and expense, promptly re-perform any Services that fail to meet this Services Limited Warranty, or in Producto’s discretion, refund to Customer the fees paid for the non-conforming Services.

1.4 Termination of Limited Warranties. The limited warranties provided in this Section will be deemed to have been voided and terminated if: (i) any deliverable is modified by Customer or its employees or agents (other than a modification authorized or approved by Producto), (ii) any deliverable is damaged after acceptance by Customer for any reason other than a failure that results from a breach of warranty by Producto, (iii) any deliverable is damaged after acceptance by Customer by abuse, misuse, operation other than in accordance with applicable documentation or through Customer’s failure to perform routine or required maintenance, or (iv) any failure of a deliverable to be compatible with any other systems or operating environment unless such compatibility was set forth as a requirement in the applicable statement of work.

1.5 Disclaimer: EXCEPT FOR THE LIMITED WARRANTIES PROVIDED HEREIN, PRODUCTO MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO, AND HEREBY SPECIFICALLY DISCLAIMS ANY AND ALL OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE. PRODUCTO FURTHER SPECIFICALLY DISCLAIMS ANY AND ALL WARRANTIES, INCLUDING BUT NOT LIMITED TO, (I) ANY WARRANTY ARISING FROM USAGE OF TRADE OR BY COURSE OF DEALINGS; (II) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; AND (III) ANY WARRANTY FOR ANY CUSTOM DESIGN AND/OR ENGINEERING SERVICES PROVIDED BY PRODUCTO AND/OR ENCLOSURES OR TOOLING THAT MAY BE DEVELOPED BY PRODUCTO BASED UPON THE CUSTOMER’S SPECIFICATIONS, DESIGNS, DRAWINGS, CONCEPTS, MEASUREMENTS, MODELS, PROTOTYPES AND/OR INTENDED USE.

2. Limitations on Liability

IN NO EVENT SHALL PRODUCTO BE LIABLE TO CUSTOMER OR TO ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT OR FOR SPECIAL OR CONSEQUENTIAL DAMAGES ARISING FROM OR IN ANY MANNER CONNECTED WITH THE MANUFACTURE, DELIVERY OR USE OF THE ENCLOSURES, TOOLING OR SERVICES PROVIDED COVERED BY THIS PROPOSAL REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. FURTHERMORE,

LIABILITY OF PRODUCTO FOR ANY AND ALL CAUSES, WHETHER FOR NEGLIGENCE, STRICT LIABILITY, BREACH OF CONTRACT, WARRANTY OR OTHERWISE, SHALL IN THE AGGREGATE NOT EXCEED THE COST OF THE ACTUAL TOOL, ENCLOSURE OR SERVICES (COVERED BY THIS PROPOSAL) THAT ARE SPECIFICALLY APPLICABLE.

3. **Delivery; FOB Shipping Point; Ex Works**

Delivery of any Enclosures shall be made within a reasonable time unless otherwise specified and such reasonable time shall be computed from date of receipt at the factory of all written details pertaining to the order, including any required deposit. Unless otherwise expressly provided, delivery of Enclosures shall be as follows: (i) for domestic shipments, all goods will be shipped FOB Shipping Point, 76 Walker Road, Shirley, MA, 01464, USA; and (ii) for international shipments, Ex Works, 76 Walker Road, Shirley, MA, 01464, USA. For both domestic and international shipments, all risk of loss or damage in transit shall be borne exclusively by Customer who shall be responsible for filing any claims against the carrier. Producto shall not incur liability of any kind due to any delay or failure to deliver for any reason.

4. **Specifications, Acceptance by Customer**

The specifications attached hereto form part of this Proposal between Producto and the Customer. Customer will be deemed to have accepted these Terms and Conditions when Customer issues its Purchase Order. Customer's acceptance is limited to acceptance of Producto's Terms and Conditions, and Producto hereby objects to and rejects any proposal by Customer for additional or different terms, whether contained in Customer's Purchase Order or otherwise. If Customer proposes additional or different terms which relate to the description, quantity, price or delivery schedule of the goods (whether contained in Customer's Purchase Order or otherwise), Producto's Terms and Conditions shall supersede and be controlling, and Producto's Terms and Conditions will be deemed accepted by Customer without Customer's changes or additions to such Terms and Conditions. Producto's acceptance of the Customer's Purchase Order is expressly conditional on Customer's assent to Producto's Terms and Conditions which shall be superseding.

Customer and Producto agree that, notwithstanding the prior or subsequent use by Customer of any order form, invoice or other document containing printed terms or conditions, such other additional or different terms and conditions shall be of no force and effect. The Parties expressly acknowledge that they are contracting solely on the basis of Producto's Terms and Conditions, which contain the entire understanding of the Parties and is intended as a final expression of their agreement and a complete statement of the terms thereof, and may not be amended, modified or otherwise supplemented unless such amendments, modifications or supplements are in writing and signed by Producto's CEO. A provision contained in any order form, invoice or other document used by Customer (whether prior or subsequent to the date of this order) which is inconsistent with any provision contained herein or as contained in Producto's Terms and Conditions will have no

force or effect and will not be binding on Producto unless such provision is specifically signed by Producto's CEO.

Drawings or processes as a result of design engineering services and/or tooling design/fixtures is the sole and exclusive property of Producto. There shall be no cancellation of any order after order acknowledgement.

5. **Assignment.**

Customer shall not assign any of its rights or delegate any of its obligations under these Terms and Conditions without the prior written consent of Service Provider. Any purported assignment or delegation by Customer in violation of this Section is null and void. No assignment or delegation relieves Customer of any of its obligations.. Service Provider may assign its rights and/or delegate its obligations to an affiliate of Service Provider, at its sole discretion.