



**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”) warrants that any enclosures (collectively, “Enclosures”) delivered by ThermoFab 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 rebuilt or replacement Enclosure covered by this Proposal. At the conclusion of the Enclosures Limited Warranty period, ThermoFab shall be under no further obligation to the Customer in connection with this Enclosures Limited Warranty. ThermoFab’s sole obligation and Customer’s exclusive remedy hereunder is limited to the repair or replacement of any Enclosure which ThermoFab determines, in its sole discretion, is defective. In its sole discretion, ThermoFab 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 (1) year or the remainder of the original Enclosures Limited Warranty period applicable to replacement Enclosure at issue. For purposes 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 ThermoFab 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 ThermoFab 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 ThermoFab’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 warrants that any tooling (collectively, “Tooling” procured from ThermoFab will be free from defects in material and workmanship (the “Tooling Limited Warranty”) as hereinafter provided. This Tooling Limited Warranty shall be effective for the period of seven (7) years from the date the Tooling is put in use, or the number of total cycles stated in the body of the Quotation, whichever comes first, regardless of whether it has been modified, repaired, improved, or replaced. At the conclusion of the Tooling Limited Warranty period, ThermoFab shall be under no further obligation to the Customer in connection with this Tooling Limited Warranty. ThermoFab’s sole obligation and Customer’s exclusive remedy hereunder is limited to the repair or replacement of any Tooling which ThermoFab determines, in its sole discretion, is defective. This Tooling Limited Warranty shall be VOID and



ThermoFab shall be under no further obligation to Customer hereunder if acts outside of ThermoFab's control such as casualty, riots, rebellions, pandemics, government action, accidental explosions, fire, floods, storms, natural disasters, acts of God, terrorism, and similar occurrences prevent future use or access to the Tooling. This Tooling Limited Warranty shall also be VOID and ThermoFab shall be under no further obligation to Customer with respect to the Tooling if Customer instructs ThermoFab to relocate any Tooling to a new location designated by the Customer from where the Tooling is held at the time of such a request. Note: Any modifications or requested changes to the Tooling, shall be borne at the customer's sole expense and shall not restart the warranty timeline as governed by this paragraph 1.2.

1.3 Enclosures Services Limited Warranty: ThermoFab 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 one (1) year from the completion of any Services. As Customer's sole and exclusive remedy and ThermoFab's entire liability for any breach of the Services Limited Warranty, ThermoFab will, at its sole option and expense, promptly re-perform any Services that fail to meet this Services Limited Warranty, or in ThermoFab'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 ThermoFab), (ii) any deliverable is damaged after acceptance by Customer for any reason other than a failure that results from a breach of warranty by ThermoFab, (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, THERMOFAB 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. THERMOFAB 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 THERMOFAB AND/OR ENCLOSURES OR TOOLING THAT MAY BE DEVELOPED BY THERMOFAB BASED UPON THE CUSTOMER'S SPECIFICATIONS, DESIGNS, DRAWINGS, CONCEPTS, MEASUREMENTS, MODELS, PROTOTYPES AND/OR INTENDED USE.

## **2. Limitations on Liability; Indemnity**

2.1 **Damages Limitation.** IN NO EVENT SHALL THERMOFAB OR ANY OF ITS PARENTS, SUBSIDIARIES, AFFILIATED COMPANIES, SUCCESSORS AND/OR ASSIGNS 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, INCLUDING ANY DESIGN AND/OR ENGINEERING SERVICES PROVIDED BY THERMOFAB, 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, ANY AND ALL LIABILITY FOR ALL CLAIMS OR CAUSES OF ACTION, 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.

2.2 **No Liability for Customer's Design.** WITH REGARD TO ANY ENCLOSURES AND/OR TOOLING DEVELOPED OR ENGINEERED BY THERMOFAB BASED UPON CUSTOMER'S OWN DESIGN, IN NO EVENT SHALL THERMOFAB OR ANY OF ITS PARENTS, SUBSIDIARIES, AFFILIATED COMPANIES, OFFICERS, EMPLOYEES, SUCCESSORS AND/OR ASSIGNS BE LIABLE TO CUSTOMER OR TO ANY THIRD PARTY FOR ANY CUSTOMER DESIGN DEFECTS WHEN SUCH DESIGN IS BASED UPON THE CUSTOMER'S OWN SPECIFICATIONS, DESIGNS, DRAWINGS, CONCEPTS, MEASUREMENTS, MODELS, PROTOTYPES AND/OR INTENDED USE. PURSUANT TO SECTION 2.3 BELOW, CUSTOMER SHALL FULLY INDEMNIFY THERMOFAB FROM AND AGAINST ANY CLAIMS IN ANY WAY RELATED TO A DEFECT IN CUSTOMER'S DESIGN WHICH CAUSES INJURY OR DAMAGE.

2.3 **Indemnity.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, CUSTOMER SHALL BE SOLELY RESPONSIBLE FOR, HOLD HARMLESS, AND DEFEND THERMOFAB, ANY OF ITS PARENTS, SUBSIDIARIES, AFFILIATED COMPANIES, EMPLOYEES, OFFICERS, REPRESENTATIVES, END CUSTOMERS, SUCCESSORS AND/OR ASSIGNS, FROM AND AGAINST THIRD PARTY DEMANDS, SUITS, JUDGMENTS, LIABILITIES, PENALTIES, FINES, DAMAGES, LOSSES, COSTS OR EXPENSES OF WHATEVER NATURE OR CHARACTER, INCLUDING LEGAL COSTS AND CONSULTANTS' AND ATTORNEYS' FEES, FOR ALL INJURIES OR DAMAGE OF ANY TYPE TO ANY PERSON OR PROPERTY, INCLUDING INJURIES OR DAMAGE TO THIRD PARTIES OR EMPLOYEES OF ANY PARTY OR SUBCONTRACTOR THEREOF ("CLAIMS") ARISING OUT OF OR RELATED TO CUSTOMER'S ACTS OR OMISSIONS TO THE EXTENT THAT THEY PROXIMATELY CAUSE DEATH, PERSONAL INJURY OR PROPERTY DAMAGE; OR (II) NEGLIGENCE, FRAUD OR WILLFUL MISCONDUCT.

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. 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 which shall be responsible for filing any claims against the carrier. ThermoFab shall not incur liability of any kind due to any delay or failure to deliver for any reason.

4. **Specifications, Acceptance by Customer**

4.1 **Specifications.** The specifications attached hereto form part of this Proposal between ThermoFab and the Customer. Customer will be deemed to have accepted these Terms and Conditions when Customer issues its Purchase Order, including, but not necessarily limited to any and all drawings supplied by Customer which shall be specifically referenced by drawing number(s) in the Purchase Order. Customer shall be required to maintain up-to-date drawings, and it is the Customer's obligation to ensure that ThermoFab is in possession of the most current and up-to-date drawings at all times; PROVIDED, HOWEVER, no further changes to the drawings or Purchase Order will be accepted within sixty (60) calendar days of the scheduled shipping date. In the event of any changes requested by Customer to the Purchase Order and/or revisions to the drawings subsequent to ThermoFab's acceptance of the Purchase Order, ThermoFab expressly reserves the right to adjust the Purchase Price accordingly for any additional work, services, materials, supplies and/or alterations that may be necessary.

4.2 **Acceptance by Customer.** Customer's acceptance is limited to acceptance of ThermoFab's Terms and Conditions, and ThermoFab 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), ThermoFab's Terms and Conditions shall supersede and be controlling, and ThermoFab's Terms and Conditions will be deemed accepted by Customer without Customer's changes or additions to such Terms and Conditions. ThermoFab's acceptance of the Customer's Purchase Order is expressly conditional on Customer's assent to ThermoFab's Terms and Conditions which shall be superseding.

Customer and ThermoFab 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 ThermoFab'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 ThermoFab'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 ThermoFab's Terms and Conditions will have no force or effect and will not be binding on ThermoFab unless such provision is specifically signed by ThermoFab's CEO.

4.3 ThermoFab's Proprietary Property. Drawings or processes as a result of design engineering services and/or tooling design/fixturing are the sole and exclusive property of ThermoFab. All patented and patentable materials, any and all written materials whether or not subject to copyright protection, as well as all specifications, designs, blueprints, technical documents, instructions, molds, models, casts, formulas, sketches, drawings, manufacturing processes, know-how, software and software protocols, and other business information to which Customer may have access to under this Agreement shall be proprietary to ThermoFab ("ThermoFab's Proprietary Property") and shall remain the sole and exclusive property of ThermoFab. ThermoFab's Proprietary Property shall be kept confidential, shall not be used by Customer, its agents, affiliates, representatives or employees for any purpose except in connection with the work to be done by ThermoFab for Customer under this Agreement, and shall not be used disclosed or made available to any other third party by Customer or its agents, representative or employees without prior written authorization from ThermoFab. By its acceptance of ThermoFab's Terms and Conditions, Customer agrees to take all necessary precautions against theft, loss, unauthorized duplication or wrongful distribution, or unauthorized use of ThermoFab's Proprietary Property. Customer is strictly prohibited from utilizing any of ThermoFab's Proprietary Property in any manner other than as expressly intended hereunder, and nothing contained herein may be construed a license or authorization by ThermoFab for Customer to utilize any of ThermoFab's Proprietary Property in such manner.

4.4 No Cancellation. Customer shall not be permitted to cancel any order once it has been received by ThermoFab.

#### 5. Assignment & Subcontracting.

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 ThermoFab. 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. ThermoFab may assign its rights and/or delegate its obligations to an affiliate of ThermoFab, at its sole discretion. ThermoFab may utilize subcontractors to perform its obligations under this agreement without written consent of the Customer without relieving ThermoFab's duty to deliver products in accordance with Customer.

### Supplementary Tooling Terms

1. 2D and 3D drawings should be provided when placing an order. If 3D files or drawings require editing, then there may be additional NRE charges.



2. Quoted lead time is calculated from receipt of final drawings, approval of mold design and production of acceptable trial samples.
3. Prices are subject to change according to your final drawings. Thermofab will follow tolerances specified in ISO 2768-2:1993 Class K, when not noted on drawing(s).
4. Customers will be charged a mold storage and maintenance fee, if their mold has not been active for over six months and will be disposed of after three years of non-use without recourse by the Customer.
5. Non-Recurring Engineering cost includes 5 first shot acceptable parts from the mold