

Manufacturing Services Agreement

This Manufacturing Agreement, including Exhibits attached hereto, is made by and between Proto-Pac Engineering, hereinafter referred to as “Proto-Pac” and [*Customer Name & Address*] (hereinafter referred to as “Customer”) for the purchase and sale of various products as detailed in Exhibit A hereto (the “Products”) under the following terms and conditions.

1.0 TERM/SCOPE OF WORK

- 1.1 This Agreement shall commence on the date signed by both parties, and shall continue for an initial period of one (1) year from the date of first commercial production of the Products hereunder. At the conclusion of such initial period, this Agreement shall be subject to automatic extension for successive annual periods, unless either party notifies the other in writing at least three (3) months prior to the end of the initial period, or the then current extension period, of its desire not to renew.
- 1.2 Proto-Pac will manufacture, test, and deliver the Products ordered under Customer’s Purchase Orders, which reference this Agreement and a valid Proto-Pac Quotation and are accepted by Proto-Pac. Products shall be manufactured and tested in accordance with the applicable design drawings and specifications provided by Customer and accepted by Proto-Pac.

2.0 PRICES

- 2.1 The prices charged by Proto-Pac to Customer for Product will be based upon the Pricing Model set forth in Exhibit A.
- 2.2 Actual prices, lead-times, none cancelable/non returnable, and minimum lot or reel quantities shall be as set forth in the applicable Proto-Pac quotation. Prices quoted are exclusive of taxes and Customer is responsible for all taxes except those taxes based upon the income of Proto-Pac.
- 2.3 Prices quoted for each Product are based on anticipated annual volumes. Actual product pricing will be based on committed Purchase Order volumes.
- 2.4 Proto-Pac and Customer agree to review Product pricing every six months. Price adjustments shall be upon mutual agreement of the parties and may be based on volume increases or decreases as well as changes in component or labor costs.

3.0 FORECASTS AND ORDERS

- 3.1 Customer shall provide to Proto-Pac a one hundred eighty (180) day rolling forecast of expected Product order volumes on a monthly basis.

- 3.2 Customer will issue Purchase Order(s) monthly, for Product to be delivered no less than 2 weeks beyond the maximum material lead-time, following the date of the Purchase Order. Proto-Pac will accept Customer's written, telex, facsimile, and/or electronic Purchase Order(s) in compliance with this Agreement.
- 3.3 All Purchase Orders must include the following information:
- a) Description of the Product(s) to be purchased, including Customer's part number and revision letter or number, quantity, price, and agreed upon delivery date(s),
 - b) Delivery instructions
 - c) Ship to and bill to address
- 3.4 The terms and conditions of this Agreement shall govern all Purchase Orders and no other terms or conditions set forth in the Purchase Order shall apply.

4.0 CANCELLATION AND RESCHEDULE

- 4.1 The delivery dates for Product on any Purchase Order hereunder may be rescheduled by Customer no more than once as follows.

Days Prior to Scheduled Delivery	% of Product Quantity which can be Rescheduled	Maximum Days Delivery Extension
1 - 30	25	30
31 - 60	50	30
61 - 90	75	45
91 +	100	45

- 4.2 Customer may not cancel any part of Purchase Order issued hereunder which has a firm schedule unless non-performance or quality issues arise at which time customer shall be responsible for material expenditures.

5.0 COMPONENT PROCUREMENT

- 5.1 Customer will furnish to Proto-Pac, prior to any request for a quotation, the Component Parts List (raw materials; and/or components; and/or subassemblies; collectively, the "Components") and the Authorized Vendor List for the Product ("AVL"). Proto-Pac will not change the Components or the AVL without receipt of written permission from Customer.
- 5.2 Procurement of the Components from the AVL is the responsibility of Proto-Pac. Proto-Pac will purchase Components for subsequent quarters according to the

Customer's forecasts. Customer understands that such forecast will be used for procurement purposes.

- 5.3 Customer shall advise Proto-Pac, and furnish copies to Proto-Pac, of Customer's contracts with vendors listed in the AVL. Proto-Pac shall be permitted to purchase Components under such contracts as if the Customer thereunder. Proto-Pac will comply with the terms of such contracts as if Proto-Pac was the Customer thereunder.
- 5.4 Exhibit B sets forth the Components which must be ordered outside the purchase order window to meet Customer's forecast ("Long Lead Time Components"). Proto-Pac will procure Long Lead Time Components to meet Customer's forecast, and in the event that Customer does not place Purchase Orders for the aggregated quantities of Product as forecasted sufficient to consume all such Long Lead Time Components, then Customer will, at Customer's option, either issue additional Purchase Order(s) and take delivery of Product within 30 days of the forecasted delivery date, or, remove said Long Lead Time Components from Proto-Pac's facility and pay to Proto-Pac the Long Lead Time Component cost, plus material acquisition rate within 30 days of the forecasted delivery date.

6.0 CHANGES

- 6.1 Customer may, upon three (3) business days prior written notice to Proto-Pac, make changes to the Product, including changes to 1) drawings, plans, designs, procedures, specifications, test specifications or bills of material, 2) methods of packaging and shipment, and 3) Customer provided equipment. If any such change causes either an increase or decrease in Proto-Pac's cost to manufacture, test and/or deliver the Product, or the time required for performance of any part of the work under this Agreement, an equitable adjustment shall be made in prices consistent with the Pricing Model, and delivery schedules shall be adjusted to reflect a mutually agreed implementation schedule for the changes.
- 6.2 Customer shall reimburse Proto-Pac for all costs associated with any obsolete Components resulting from any engineering or other changes by Customer at the rate of the cost of such Components, plus the acquisition rate.
- 6.3 Proto-Pac shall, as appropriate, during manufacture of Product, make suggestions for cost saving design changes. Any opportunities for cost reductions, shall require Customer's review and written approval before implementation. The benefits of any cost reductions developed by Proto-Pac shall accrue 50% to Customer and 50% to Proto-Pac after any cost of development and implementation by Proto-Pac is deducted from the cost savings realized. Cost savings as a result of these savings will be shared equally for a period of six months after which time the cost savings will be fully incorporated into all shipments. The benefits of any cost reductions developed by Customer shall

accrue solely to the Customer after any cost of implementation by Proto-Pac is deducted from the cost savings due Customer.

7.0 WARRANTY

- 7.1 Proto-Pac warrants for twelve (12) months from date of manufacture that the Products will be free from defects in Proto-Pac workmanship, and such warranty shall survive inspection and acceptance. Proto-Pac further warrants that the Product is free of all liens and encumbrances.
- 7.2 In the event of a breach of warranty hereunder, Proto-Pac shall, at its option, either repair, replace, issue a credit or refund the purchase price for Product found to be defective within the terms of this warranty. The foregoing shall be Customer's sole and exclusive remedy in the event of a breach of warranty.
- 7.3 This warranty shall be void with respect to Product which has been (a) modified, (b) subjected to damage, misuse, or neglect, (c) repaired by unauthorized sources, (d) operated contrary to current instructions relating to installation, maintenance or operation, or (e) subject to lightning or excessive voltage. This warranty shall also not apply in cases where the defect is the result of instruction by Customer, or the Product unit is a prototype.
- 7.4 Defective Products will be repaired or replaced at Proto-Pac's designated repair facility. Products may be returned to Proto-Pac upon the receipt of Proto-Pac's Return Authorization, freight prepaid, to Proto-Pac's designated repair facility. Repaired or replaced Products will carry the balance of the original warranty period. Any Products that are repaired or replaced under warranty will be returned, freight prepaid, by Proto-Pac to Customer. Customer shall pay a shipping and handling charge, based upon Proto-Pac's then standard rates, for all Products returned to Proto-Pac, which are determined **not** to be defective within the terms of this warranty. Replaced Product shall become Proto-Pac's property.
- 7.5 Proto-Pac's warranties shall survive any inspection, delivery, payment, and termination of this Agreement. Proto-Pac expressly disclaims all other warranties, guarantees, or remedies, whether express, implied, or statutory, including any implied warranties of merchantability or fitness for a particular purpose.
- 7.6 Customer's exclusive remedies concerning Proto-Pac performance or non-performance are those expressly stated in this Agreement. Under no circumstances will Proto-Pac be liable for loss of data, procurement costs, lost revenues or profits, or for any other indirect, special, incidental, economic or consequential damages, even if they were foreseeable or Customer has informed Proto-Pac of their potential. And Proto-Pac will not be liable for any damages claimed by Customer based upon any third party claim. Notwithstanding the preceding express waiver of liability, should Proto-Pac be found to be liable to a customer for any damages claimed under damages under this Agreement, such

damages shall not exceed the greater of US \$100,000, or the price Customer paid Proto-Pac for the Products at issue in Customer's claim. This limitation will apply regardless of the form of the action (i.e. whether the lawsuit is in contract or in tort, including negligence, and should not be deemed to diminish or rescind the preceding express disclaimer of liability), but will not apply to claims made by Customer for bodily injury if Proto-Pac is solely responsible for the injury. This paragraph shall survive any failure of an exclusive or limited remedy.

- 7.6 At Customer request, and subject to the availability of parts and other needed resources, Proto-Pac will repair out-of-warranty Product at Proto-Pac's standard charges in effect at that time for such services.

8.0 CUSTOMER-FURNISHED EQUIPMENT, MATERIAL, AND DOCUMENTATION

- 8.1 Equipment, material or documentation as outlined in Exhibit C shall be provided by Customer to Proto-Pac for use in the performance of this contract at least 15 days prior to commencement of work hereunder.
- 8.2 Any Customer furnished equipment, material or documentation shall be fit for its intended purpose and delivered to Proto-Pac in a timely manner. Documentation, including bills of material, drawings and artwork shall be current and complete.
- 8.3 Proto-Pac shall be responsible for reasonable diligence and care in the use and protection of any Customer-furnished equipment. Proto-Pac shall not, however be liable for repair or replacement of such equipment due to normal wear and tear, nor shall Proto-Pac be responsible for maintenance costs unless agreed to in writing by Proto-Pac.

9.0 NON-RECURRING EXPENSES

It is possible that certain non-recurring services will be required in connection with the manufacture or assembly of the Product(s). Proto-Pac will furnish such services as outlined in Exhibit D. The charges for such services and payment schedule are also set forth in Exhibit D.

10.0 CONFIDENTIAL INFORMATION

All written information and data exchanged between parties for the purpose of enabling Proto-Pac to manufacture and deliver product under this Agreement that is marked "Confidential" or the like, shall be deemed Confidential Information. The party receiving such Confidential Information shall not disclose directly or indirectly such information to any person not having a need to know it for the purpose of performing this Agreement, and shall not make use of such information for purposes other than this Agreement, without the prior written consent of the disclosing party. This Section shall not apply to any Confidential Information which is: (a) in the public domain at the time of disclosure, or enters the public domain without breach of this Agreement; or (b) known to the receiving party prior to the disclosure, or is independently

developed by the receiving party without reference to the Confidential Information; or (c) obtained by the receiving party in good faith from a third party not under obligation of secrecy to the disclosing party; or (d) the subject of a court or government agency order to disclose, provided the receiving party gives prompt notice to the disclosing party to allow the disclosing party to contest such order. Confidential Information disclosed pursuant to this Agreement shall be maintained confidential for a period of two (2) years after the disclosure thereof. No right or license either expressed or implied is granted to either party under any patent, patent application, or any other intellectual property right as a result of such disclosure.

11.0 PAYMENT/DELIVERY

- 11.1 Payment is due to Proto-Pac Net 30 calendar days after date of invoice (“Due Date”), without deduction or offset, in United States dollars. On any invoice not paid by the Due Date, Customer shall pay interest from the Due Date of payment to the date of receipt of payment at the rate of 1.5% per month.
- 11.2 Delivery is FOB Proto-Pac’s plant. Customer shall be responsible for all transportation costs and expenses. Proto-Pac shall arrange for the carrier and mode of transportation unless otherwise directed by Customer. Acceptance shall be upon delivery.

12.0 TERMINATION

- 12.1 Either party may terminate this Agreement at any time without cause by giving the other party at least one hundred twenty (120) calendar days prior written notice. Neither the expiration nor the earlier termination of this Agreement without cause shall release either party from any obligation which has accrued as of the date of such expiration or termination.
- 12.2 Either party may terminate this Agreement, and any purchase order hereunder, for cause
- (a) in the event of a material breach of an obligation of the other party hereunder which remains uncured thirty (30) days following written notice of such breach from the terminating party;
 - (b) in the event the other party assigns this Agreement, or any obligation or right under this Agreement to a third party which is not an affiliate without the prior written consent of the terminating party, which shall not be unreasonably withheld, or
 - (c) in the event the other party becomes insolvent or makes an assignment for the benefit of creditors, or a receiver or similar officer is appointed to take charge of all or part of that party's assets.

- 12.3 Upon termination, Proto-Pac shall make reasonable efforts, in accordance with standard industry practices, to cancel open vendor orders. At Customer's option, Customer may assist Proto-Pac to cancel such orders. Expenses incurred by Proto-Pac in connection with Proto-Pac's effort to cancel such orders, including but not limited to, cancellation charges and travel expenses incurred by Proto-Pac shall be reimbursed by Customer promptly upon receipt of Proto-Pac's invoice.
- 12.4 In the event that Customer terminates this Agreement without cause or Proto-Pac terminates this Agreement or a purchase order for cause, in addition to all unpaid balances due to Proto-Pac, Customer shall pay Proto-Pac a cancellation charge equal to the sum of; (a) the unpaid price of all finished Product manufactured pursuant to purchase orders accepted by Proto-Pac as of the effective date of termination, (b) all costs incurred by Proto-Pac in connection with any work in process, including but not limited to all material and labor costs incurred to date and termination or cancellation fees associated with materials or labor, increased charges incurred due to volume reduction for material usage or any other charges incurred by Proto-Pac from its Suppliers, general and administrative overhead expenses, and (c) Proto-Pac's standard mark-up in accordance with the Pricing Model.
- 12.5 In the event Customer terminates this Agreement or a purchase order for cause, Customer will (a) remove all unused vendor material that Proto-Pac has ordered in reasonable anticipation of its performance under this Agreement and pay Proto-Pac's cost and standard mark-up in accordance with the pricing model therefor; (b) remove all work-in-process as of the date of termination and pay to Proto-Pac the prorated price therefore based upon a reasonable estimate of completion; and (c) remove all conforming finished Product inventory manufactured to Customer's purchase orders and pay the price therefor.
- 12.6 Except as expressly stated in this Agreement, neither party will be liable to the other for any damages or compensation due to the termination of this Agreement.

13.0 INDEMNITY

- 13.1 Customer will indemnify and hold Proto-Pac, its officers, agents and employees harmless from and against any liability, cost or expense (including attorneys fees), and from any damages awarded, resulting from any claim of infringement of any third party's patent, trademark, copyright, trade secret, or other intellectual property rights in connection with any Product manufactured by Proto-Pac hereunder.
- 13.2 Customer will indemnify and hold Proto-Pac, its officers, agents and employees harmless from and against any liability, cost or expense (including attorneys fees), and from any damages awarded, resulting from any product liability claim of any third party with respect to any Product manufactured by Proto-Pac hereunder.

14.0 OTHER

- 14.1 In addition to any provisions of this Agreement which by their nature are intended to survive expiration or termination of this Agreement, Sections 5.4, 6.2, 11.1, 14.2, and all of 7.0, 9.0, 10.0, 12.0, and 13.0 shall survive the termination or expiration of this Agreement.
- 14.2 Neither party will be liable to the other for any delay or failure to perform due to unforeseen circumstances or causes beyond its reasonable control and without its fault or negligence. Such causes shall include, but not be limited to, acts of nature or the public enemy, war, riot, embargoes, act of civil or military authorities, fire, floods, unusually severe weather, accidents, strikes and shortages of transportation facilities, fuel, labor, or materials.
- 14.3 This Agreement, including all of its referenced Exhibits, constitutes the entire agreement between the parties with respect to the manufacture and assembly of Products by Proto-Pac for and on behalf of Customer. It supersedes any terms or conditions contained on printed forms submitted as part of a Purchase Order, sales acknowledgment or invoice. It also supersedes all previous oral or written communications between the parties regarding the manufacture and assembly of Products. This Agreement may not be modified except by a written document signed by an authorized representative of the party against whom enforcement is sought. If any provision of this Agreement is held invalid, all other provisions will remain valid, unless such invalidity would frustrate the purpose of this Agreement.
- 14.4 This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts without regard to its conflict of laws rules. The parties specifically agree that the United Nations Convention on the International Sale of Goods shall not apply to this Agreement.
- 14.5 Both parties agree that the exclusive jurisdiction and venue of any legal action arising out of this Agreement, including disputes that may arise following termination of this Agreement, shall be the state or federal courts sitting within the Commonwealth of Massachusetts, and each party hereby submits itself to the exclusive jurisdiction and venue of those courts for the purposes of each action. Customer acknowledges and agrees that this Paragraph serves as a material inducement for Proto-Pac to enter into this Agreement.
- 14.6 This Agreement and the rights, duties and obligations under this Agreement may not be assigned in whole or in part by operation of law or otherwise without the prior written consent of the other party, which shall not be unreasonably withheld,

provided, however, that either party may assign all or any part of this Agreement to any subsidiary or affiliate of such party or a purchaser of substantially all of the assets of the such party and such subsidiary, affiliate or purchaser agrees in writing to be bound by all the terms and provisions of this Agreement. Any attempted assignments of any rights, duties or obligations under this Agreement without such required consent shall be null and void. This Agreement shall be binding on each party's respective successors and permitted assigns.

- 14.7 Customer and Proto-Pac are independent contractors and have no power, right or authority to bind the other party or to assume or to create an obligation or responsibility, express or implied, on behalf of the other party. Nothing in this Agreement shall be construed as creating a partnership relationship between Customer and Proto-Pac or as creating the relationships of employer and employee, master and servant, or principal and agent between the parties hereto. Both parties will conduct their business affairs in accordance with the highest ethical standards.
- 14.8 Any failure or delay by either party in exercising any right or remedy provided by or relating to this Agreement in one or many instances does not constitute a waiver and shall not prohibit a party from exercising such right or remedy at a later time within applicable statute of limitations or from exercising any right or remedy otherwise available.
- 14.9 If any provision of this Agreement shall for any reason, be held invalid, illegal or unenforceable by a court or tribunal of competent jurisdiction, this Agreement shall be deemed severable and such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, which shall be enforced in accordance with the intent of this Agreement.
- 14.10 Any required or permitted notice will be deemed to have been given when received in writing at the address of the party being given notice.
- 14.11 Customer agrees to comply with all applicable export control laws and regulations and warrants that Products are not intended to be shipped directly or indirectly to prohibited countries. Customer is responsible for obtaining any government documents and approvals prior to any export of Products.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed effective as of last signature date, by their officers, duly authorized.

For Proto-Pac.:

For Customer:

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT A

Products, Specifications, and Pricing

EXHIBIT B

Long Lead Time Components

EXHIBIT C

Customer Furnished Equipment, Material, and Documentation

EXHIBIT D

Non-Recurring Services