

WAREHOUSE AND RELATED SERVICES TERMS AND CONDITIONS (the "Agreement")

MacroFab, Inc. ("MacroFab") has made available to you (hereafter "Customer") software, applications or services for warehousing and other Services as defined in Section 3.1 below, that allow Customer to access, use and exchange information, instructions, and agreements with MacroFab, via the internet, world wide web, personal computing device, mobile device, tablet, smartphone, or any other device utilizing internet connectivity to communicate information. This software, application or service for the purpose of this Agreement is called the "Website". This Agreement does not apply to any manufacturing or services other than those described in this paragraph which may be performed by MacroFab for Customer or others.

Please read this Agreement carefully before clicking the "I AGREE" button or accessing or using the Website. By clicking the "I AGREE" button or accessing or using the Website or any of its contents, Customer is entering into and agreeing to be bound by the terms of this Agreement. If Customer does not agree to this Agreement, do not use the Website. Customer enters into this Agreement and is bound by its terms and conditions as good and valuable consideration for its continued use of the Website.

Customer agrees to take all reasonable steps to ensure only Customer and those persons authorized to use the Website on its behalf for purposes of legitimate transactions between Customer and MacroFab (an "Authorized End User") access the Website. For the remainder of this Agreement, Customer will refer collectively to Customer and any Authorized End User. Customer and MacroFab may together be referred to as the "Parties", and each separately a "Party".

This Agreement may be updated from time to time. Customer agrees to check the Website periodically for updates to this Agreement. Each time Customer uses or accesses the Website, Customer confirms its acceptance and agreement, without limitation or qualification, to be bound by the then current Agreement.

Customer agrees that MacroFab does not operate or control any wireless or other network used to access Customer's account, and MacroFab is not responsible or liable for the privacy and security of Customer data and information transmissions. Customer agrees that it is Customer's sole responsibility to confirm the privacy and security practices of the networks Customer uses and to only use a reputable network or internet service provider or a secure (not open) access point that is operated by a person or entity Customer has reason to trust.

Customer agrees that it is Customer's responsibility to maintain the security of any device Customer uses to access the Website and to protect that device and the Website from unauthorized access. Customer agrees that the act of any Authorized End User accessing or using the Website or any of its contents shall be contingent on that Authorized End User's agreement to the terms and conditions in this Agreement, and that Customer shall make available and provide this Agreement to all Authorized End Users. All Authorized End Users shall be bound by the terms in this Agreement. Customer further agrees that in the event of any unauthorized access or attempt to access any device Customer uses to access the Website, Customer shall immediately notify MacroFab of any such access or attempt and cooperate with any investigation by MacroFab into such access or attempt.

Use of the Website may permit or require Customer to register or create an account to access the Website. In that event, Customer agrees to provide and maintain accurate, current and complete information, including Customer contact information for notices and other communications from MacroFab. Customer shall not impersonate or misrepresent Customer affiliation with any person or entity, including using another person's or entity's email, password or other account information, or another entity's or person's name or likeness.

Customer is responsible for all activities that occur through the Customer account and password. Customer agrees to create a password that is secure and kept confidential. Customer acknowledges that MacroFab is entitled to assume that any information transmitted using the Customer account has been transmitted by Customer. MacroFab has the absolute authority to effect any order, instruction or request made via the Website where the requisite account and password information in relation to the Customer

account has been provided. Customer agrees not to allow any other person or entity that is not an Authorized End User to access the Customer account, and Customer agrees not to share Customer's password or any other account information with any other person or entity. Customer agrees that MacroFab is entitled to decline to process any order, instruction or request transmitted via a device using Customer's account details in MacroFab's sole discretion if MacroFab suspects fraud, unauthorized use, or for any other reason.

MACROFAB WILL NOT BE LIABLE FOR: ANY FAILURE OF ELECTRONIC OR MECHANICAL EQUIPMENT OR TELEPHONE OR OTHER COMMUNICATION LINES, OR INTERNET OR OTHER CONNECTION PROBLEMS WITH THE WEBSITE; INABILITY TO ACCESS OR UNAUTHORIZED ACCESS TO THE WEBSITE; WEBSITE OPERATION ERRORS OR ANY DELAY IN TRANSMISSION OF ORDERS, INSTRUCTIONS OR INFORMATION; TRANSMISSION OF ANY COMPUTER VIRUS, SPYWARE OR MALWARE; WEBSITE OR COMPUTER HACKING, OR THEFT OF ANY BUSINESS, PERSONAL, FINANCIAL OR PAYMENT INFORMATION; OR OPERATION ERRORS; AND CUSTOMER HEREBY EXPRESSLY WAIVES AND RELEASES ANY AND ALL RIGHTS, CLAIMS AND CAUSES OF ACTION ARISING OUT OF OR RELATED TO THE FOREGOING, WHETHER ARISING IN CONTRACT, NEGLIGENCE, OR IN EQUITY.

CUSTOMER AGREES TO DEFEND AND INDEMNIFY MACROFAB AND ITS DIRECTORS, OFFICERS, AGENTS AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, LOSSES, DAMAGES, SUITS, DEMANDS, SETTLEMENTS, EXPENSES, ATTORNEYS' FEES, EXPERT FEES AND COSTS OF ARBITRATION OR COURT ARISING OUT OF OR RELATED TO ANY AND ALL CLAIMS, SUITS, OR DEMANDS (COLLECTIVELY, "CLAIMS") BROUGHT OR ASSERTED BY ANY THIRD PARTY AND ARISING OUT OF CUSTOMER'S USE OF THE WEBSITE; **EVEN IF ANY SUCH CLAIM ARISES OUT OF MACROFAB'S OR ITS DIRECTOR'S, OFFICER'S, AGENT'S OR EMPLOYEE'S SOLE OR PARTIAL NEGLIGENCE.** CUSTOMER AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS MACROFAB, ITS DIRECTORS, OFFICERS, AGENTS AND EMPLOYEES FROM THE CONSEQUENCES OF THEIR OWN NEGLIGENCE AS PROVIDED HEREIN.

1. TERM

1.1 The term of this Agreement shall begin on Customer's clicking the "I AGREE" button or accessing or using the Website, and thereafter shall automatically renew on a month-to-month basis, unless and until terminated as provided in Section 6 below (the "Term"). All Services requested by Customer and all Services provided by MacroFab over the Term are subject to and governed by the terms and conditions of this Agreement.

2. WAREHOUSING

2.1 **Warehouse.** All goods purchased, manufactured and/or sold by Customer and tendered under this Agreement ("Goods") shall be stored at MacroFab's warehouse located at 1107 Hutchins Street, Houston, Texas 77003 (the "Warehouse"). Customer shall have the right to inspect and inventory all or any of its Goods in the Warehouse during normal business upon written notice to MacroFab and when accompanied by an authorized MacroFab employee. If Customer desires access outside of normal business hours, Customer will coordinate access with MacroFab. Customer shall comply with all MacroFab safety protocols while in the Warehouse or on MacroFab premises, including but not limited to wearing all appropriate personal protective equipment. MacroFab may, without notice to Customer, move goods within the Warehouse.

2.2 **Warehouse Maintenance.** MacroFab shall be responsible for all operating expenses in connection with the operation of the Warehouse, including rent, utilities, heating, ventilating and air conditioning, insurance and real property taxes, unless otherwise agreed to by the Parties. MacroFab shall maintain the Warehouse in a neat and orderly condition, and shall be responsible for normal repair and maintenance costs.

2.3 **No Consignment.** MacroFab shall operate at all times as a warehouseman under the Texas Business and Commerce Code. Customer shall not ship Goods to MacroFab as a named consignee, and MacroFab shall have no duty to accept and may reject any purported consignment of Goods.

2.4 **Tender for Storage.** All Goods tendered for storage, other than those Goods tendered for storage which are manufactured or procured by MacroFab for Customer, shall be delivered at the Warehouse in a segregated manner, accompanied by the appropriate shipping documentation, including but not limited to quantities and detailed descriptions of all Goods tendered for storage, identification of Customer, and properly marked and packaged for handling. MacroFab shall have no duty or obligation to accept any Goods with payment due delivery terms, and shall not be liable for any such payment.

2.5 **Hazardous Materials or Substances.** Customer shall not ship any hazardous materials or substances to MacroFab, and MacroFab will not store and may refuse to accept delivery of any goods, materials or substances which MacroFab in its sole discretion believes to be hazardous. If MacroFab did not have notice at the time of receipt of any Goods and later determines as a result of their quality or condition that they are a hazard to other property, the warehouse facilities, or persons, MacroFab may sell the Goods at public or private sale without advertisement or posting on reasonable notification to Customer and all persons known to claim an interest in the Goods. MacroFab shall deliver the Goods to any person entitled to them upon due demand made at any time before sale or other disposition hereunder. If MacroFab, after a reasonable effort, is unable to sell the Goods, it may dispose of them in any lawful manner and shall not incur any liability by reason of such disposition. MacroFab may satisfy its warehouse lien from the proceeds of any sale or disposition under this provision. Customer shall be responsible for all costs and expenses incurred by MacroFab in connection with any such sale or disposition.

2.6 **Loss and Limit of Liability.** MacroFab shall promptly notify Customer of any loss of or damage to Goods stored in the Warehouse, and Customer shall promptly notify MacroFab in writing of any claimed loss of or damage to Goods stored in the Warehouse. MacroFab shall be entitled to a loss allowance of 0.25% of units of Goods received, and shall pay Customer an amount equal to the manufactured price of the Goods for any loss of or damage to Goods stored in the Warehouse in excess of such loss allowance, which loss or damage was caused by MacroFab's failure to exercise care with regard to the Goods that a reasonably careful person would exercise under similar circumstances ("the Standard of Care"), and such payment shall be Customer's sole and exclusive remedy for any such loss or damage. MacroFab shall have no liability for any damages that could not have been avoided by the exercise of the Standard of Care.

3. SERVICES

3.1 **Services.** MacroFab may perform certain services for Customer as requested by Customer through the placement of an Order on the Website, which services may include procurement, receipt, storage, picking, and delivery of Goods, but shall not include any manufacturing or other services performed by MacroFab for Customer (collectively, the "Services"). MacroFab shall furnish all personnel, materials, equipment, supplies and facilities necessary to perform the Services promptly and efficiently, subject to delays, disruption, hindrance or interference beyond MacroFab's reasonable control. Any and all Goods purchased by MacroFab on behalf of Customer shall be purchased by MacroFab as agent for Customer, and MacroFab shall have no liability for payment of the purchase price or shipping costs, or the quality or condition of any such Goods, and MacroFab shall not under any circumstances be or be construed to be the seller of any such Goods, and **MACROFAB EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES AS TO ANY SUCH GOODS, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY OR SUITABILITY FOR INTENDED USE.**

3.2 **Handling.** Handling rates and charges set forth in the Website schedule of rates and charges shall cover ordinary labor and administration involved in receiving Goods at the Warehouse door or dock, placing Goods in storage and returning Goods to the Warehouse door or dock.

3.3 **Scheduling.** Receiving of inbound shipments and staging or delivery of outbound shipments will be during normal business hours and on a mutually agreed upon schedule after MacroFab's receipt from Customer of written notice of proposed delivery or shipment.

3.4 **Inspection upon Receipt.** MacroFab shall compare Goods received to shipping documentation presented, and perform a reasonable visual inspection of Goods received, but shall have no obligation to uncrate, unpack, remove packaging materials, or open boxes or containers of Goods to verify quantities or condition. MacroFab shall promptly notify Customer of any known discrepancy on inbound shipments, and shall place an appropriate notation on the delivering carrier's shipping documents. MacroFab shall have no duty to accept and shall not accept any Goods tendered that, because of infestation or contamination, might cause infestation or contamination to the Warehouse or other goods stored therein. Unless MacroFab is otherwise instructed in writing by Customer, MacroFab shall not accept Goods known to be damaged.

3.5 **Customer Return.** If Customer elects to return Goods purchased by Customer, including but not limited to those procured by MacroFab on Customer's behalf, and received by MacroFab, for any reason, Customer shall pay MacroFab a restocking fee in accordance with MacroFab's rates and charges as set out on the Website as a result of such return.

3.6 **Delivery Requirements.** No Goods shall be delivered or transferred except upon receipt by MacroFab through the Website of complete instructions properly authorized and executed by Customer, including but not limited to name and address of recipient, and payment, schedule and other terms of delivery. Upon Customer's request through the Website and at Customer's cost, MacroFab shall insure MacroFab shipments of Goods from the Warehouse for the value specified by Customer. In the event of an insurance claim, Customer shall be responsible for justification of the insured value of the Goods.

3.7 **Inventory and Records.** MacroFab shall maintain records of all shipments of Goods into and out of the Warehouse, based upon shipping documentation accompanying inbound shipments and MacroFab records of outbound shipments. MacroFab shall report to Customer the quantities on each inbound and outbound shipment based upon such records and, once reported to Customer, such count shall establish the number of units and/or cases and/or pallets received or shipped, unless other documentation can prove to the contrary. MacroFab shall maintain complete and accurate books and records, recording all inbound and outbound shipments, so as to produce a continuous balance that shows the number of units, cases or pallets of all Customer Goods that should be in the Warehouse at any given time. Upon reasonable written notice to MacroFab, Customer shall have the right to perform a physical inventory of its Goods, and examine all of the inventory records maintained by MacroFab in connection with Customer's Goods and this Agreement, during normal business hours.

4. PAYMENT

4.1 **Rates and charges.** Rates and charges for storage and other Services are as set forth in MacroFab's schedule of rates and charges at macrofab.com. MacroFab may revise such rates and charges at any time by posting the revised rates and charges on the Website, and all revised rates and charges other than storage rates and charges shall become effective immediately upon posting to the Website as evidenced by the revision date at the top of the schedule of rates and charges. . With regard to any revised storage rates or charges, MacroFab shall provide Customer with advance written notice, or electronic notice to the email address listed on Customer's Website account sign-in, of revised storage rates or charges, which revised storage rates and charges shall go into effect thirty (30) days after the date of such notice. Receiving and delivery charges shall be charged on a flat fee basis as set forth in <https://macrofab.com/help/fulfilling-orders/fulfillment-costs/>. For any services not specified in this Agreement or in the schedule of rates and charges at <https://macrofab.com/help/fulfilling-orders/fulfillment-costs/>, Customer shall pay to MacroFab such consideration as may be mutually agreed upon in advance in writing. Interest shall accrue on all amounts past due at the rate of 10.00% per annum or the maximum rate allowed by law, whichever is less.

4.2 **Payments.** All payments shall be paid by credit card through the Website, or through automatic debit or electronic funds transfer authorized by Customer through Customer's payment method supplied through the Website. All storage charges are due on a monthly basis. Storage charges shall be calculated based upon the Website rates and charges, and the quantity of Goods stored in the Warehouse on the last day of the calendar month according to MacroFab's records. Storage charges shall be automatically deducted each month via Customer's supplied payment method. Payments for all other Services are due in advance based upon the Website rates and charges.

4.3 **Warehouse Lien.** MacroFab has a general lien against all Customer Goods and proceeds thereof in MacroFab's possession for all storage, transportation, insurance, labor and other charges in relation to the Goods, and expenses necessary for the preservation of and reasonably incurred in the sale of the Goods, in accordance with MacroFab's warehouse lien rights under the Texas Business & Commerce Code, and MacroFab may enforce such lien rights by public or private sale of the Goods in accordance with applicable law.

5. GENERAL

5.1 **Independent Contractor.** MacroFab is performing the Services as an independent contractor of Customer. Nothing contained in this Agreement shall be construed to place Customer and MacroFab in a relationship as partners, joint venturers, employer/employee or principal/agent. Unless MacroFab is directed by Customer through placement of an Order on the Website to procure any Goods on Customer's behalf as Customer's agent, MacroFab shall not have any authority to create or assume in Customer's name or on its behalf any obligation, express or implied, or to act or purport to act as Customer's agent or legally empowered representative for any purpose whatsoever, and all of MacroFab's personnel shall be considered employees of MacroFab and under no circumstances shall they be construed or considered to be employees or agents of Customer.

5.2 **Compliance with laws, ordinances, rules and regulations.** MacroFab shall comply with all applicable laws, ordinances, rules and regulations of federal, state, local and other governmental authorities and entities governing the performance of the Services.

5.3 **Non-exclusivity.** This Agreement is a non-exclusive agreement, and MacroFab reserves the right to store and warehouse goods for and perform Services for other customer s, including but not limited to customers that sell or distribute products substantially similar to Customer's products.

5.4 **Customer warranties.** Customer warrants and represents that: (i) Customer has good title to all Goods; (ii) the Goods are free from any defects in design, materials or workmanship; (iii) the Goods conform to all technical specifications for products and shall perform in the manner for which such products were designed; and (iv) all intellectual property rights embodied or contained in the Goods shall and do not infringe upon or violate any intellectual property right, including but not limited to any copyright, trademark, trade name, trade secret or patent right of any third parties.

5.5 **Title to Goods.** Except as provided in Section 4.3 with regard to MacroFab's warehouse lien rights, and Section 2.5 with regard to MacroFab's rights of sale and disposition of hazardous materials or substances, all Goods in the possession of MacroFab will be and remain the exclusive property of Customer, and MacroFab will otherwise acquire no right, title or interest in or to any Goods by reason of this Agreement, and except in the course of carrying out its delivery services hereunder, MacroFab shall not transfer, assign, pledge, create a security interest in or otherwise dispose of the Goods or subject them to attachment, levy or seizure by or on behalf of any creditor of MacroFab. MacroFab agrees and acknowledges that Customer may file a UCC-1 Financing Statement with the Texas Secretary of State to protect Customer's title to the Goods.

5.6 **Property Taxes.** It is agreed and understood that MacroFab is neither the owner nor the purchaser of the Goods, and shall have no obligation or liability for the payment of any property taxes on the Goods. In addition, except as required under applicable law, MacroFab shall have no duty or

obligation to file any reports or other documentation with any taxing authority in connection with the Goods, MacroFab's storage of the Goods, or the Services. Customer shall defend, indemnify and hold MacroFab harmless from and against any and all claims, suits, liabilities, fines, penalties, damages, costs and expenses, including but not limited to attorneys' fees, incurred by MacroFab due to Customer's failure to promptly report and/or pay all property taxes due in connection with the Goods, MacroFab's storage of the Goods, or the Services.

5.7 Sales Taxes. MacroFab shall have no responsibility for the payment or collection of any sales tax or other tax, or for the preparation or filing of any sales tax or other tax documentation arising out of or related to the purchase or sale of Customer's Goods. Customer shall defend, indemnify and hold MacroFab harmless from and against any and all claims, suits, liabilities, fines, penalties, damages, costs and expenses, including but not limited to attorneys' fees, incurred by MacroFab due to Customer's failure to properly report and/or pay all sales and other taxes due in connection with the Goods or the Services.

5.8 Import/Export. Customer shall be responsible for compliance with all applicable United States and foreign import and export laws and regulations in connection with receipt and/or delivery of the Goods, including but not limited to the United States Arms Export Control Act ("AECA"), International Traffic in Arms Regulations ("ITAR"), and Export Administration Regulations ("EAR"), collectively hereafter "Import/Export Laws". By way of example and not by way of limitation, Customer shall be responsible for any required registration with the Directorate of Defense Trade Controls ("DDTC"), reviewing and complying with all product control lists, including but not limited to the Commerce Control List ("CCL"), United States Munitions List ("USML") and Nuclear Regulatory Commission Controls List ("NRCC"), obtaining all required import and export licenses, permits, certifications, authorizations and documentation, preparing and submitting all applicable documentation and filings to the appropriate governmental entities, including but not limited to filing with the United States Automated Export System, and Customer payment of all applicable import and export taxes, tariffs, duties and customs charges. MacroFab shall have no duty or obligation to import or export any Goods until Customer has provided MacroFab with satisfactory evidence of compliance with all of the foregoing obligations, including but not limited to delivering to MacroFab a copy of all required licenses, permits, or other documentation evidencing such compliance, for MacroFab's records and use. Customer shall defend, indemnify and hold MacroFab harmless from and against any and all claims, suits, liabilities, fines, penalties, damages, costs and expenses, including but not limited to attorneys' fees, incurred by MacroFab due to Customer's failure to comply with this Section 5.8.

5.9 No Collection Risk. Notwithstanding anything contained herein to the contrary or any shipment or delivery of Goods by MacroFab to any customer of Customer, it is agreed and understood that MacroFab has no duty or obligation to undertake any collection efforts on behalf of Customer, and will share no risk with respect to any failure of Customer to collect monies owed on any sale of Goods. Any such failure shall not relieve Customer of its payment obligations under this Agreement.

5.10 Mutual Waiver of Consequential Damages. Notwithstanding any term or provision in this Agreement to the contrary, under no circumstances shall MacroFab or Customer be liable for any indirect, incidental special or consequential damages arising out of or related to the Goods, the Services, this Agreement or any breach hereof, including but not limited to lost profits, loss of business reputation or loss of business advantage, even if MacroFab or Customer has been advised of the possibility of such damages.

5.11 Indemnity. CUSTOMER SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS MACROFAB, ITS DIRECTORS, OFFICERS, AGENTS AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS, SUITS, FINES, PENALTIES, DAMAGES, LOSSES, LIABILITIES, COSTS AND EXPENSES, INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES (COLLECTIVELY "CLAIMS"), INCURRED BY MACROFAB ARISING OUT OF OR RELATED TO CUSTOMER'S BREACH OF ANY OF ITS WARRANTIES, REPRESENTATIONS OR OBLIGATIONS UNDER THIS AGREEMENT, OR ARISING OUT OF OR RELATED TO THE NATURE OR CONDITION OF THE GOODS, EVEN IF SUCH CLAIMS

ARE CAUSED IN PART BY THE NEGLIGENT ACTS OR OMISSIONS OF MACROFAB, ITS DIRECTORS, OFFICERS, AGENTS OR EMPLOYEES, BUT NOT THE SOLE NEGLIGENCE OF MACROFAB, ITS DIRECTORS, OFFICERS, AGENTS OR EMPLOYEES. CUSTOMER AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS MACROFAB, ITS DIRECTORS, OFFICERS, AGENTS AND EMPLOYEES FROM THE CONSEQUENCES OF THEIR OWN NEGLIGENCE AS PROVIDED HEREIN.

5.12 **Force Majeure.** Notwithstanding any term or provision in this Agreement to the contrary, under no circumstances shall MacroFab be liable for any delay in delivery or performance or failure of performance due to acts of God or civil or military authority, acts of terrorism, war, riots, strikes, labor stoppages or slow-downs, embargoes, or any other cause beyond its reasonable control. In the event of any such delay or failure, MacroFab shall notify Customer and use commercially reasonable efforts to overcome the circumstance causing the delay or failure.

5.13 **Conflicts.** No purchase order, invoice, bill of lading or other shipping documentation may add to or alter the terms of this Agreement, and MacroFab shall not be bound by any terms or conditions of any purchase order, invoice, bill of lading or other shipping documentation not consistent with this Agreement.

5.14 **No Assignment.** Customer shall not, without the prior written consent of MacroFab, assign this Agreement by operation of law or otherwise.

5.15 **Notice.** Any notice or other communication required or permitted to be given under this Agreement shall be in writing and mailed (by U.S. certified mail, return receipt requested, postage prepaid), sent or delivered (by way of overnight courier service):

If to MacroFab, addressed to:
MacroFab, Inc.
Attn. Warehouse Services
1107 Hutchins Street
Houston, Texas 77003

If to Customer, to the address listed on the Request for Services, or to such other address as Customer or MacroFab shall give notice to the other by like means. All such notices and communications, if mailed, shall be effective upon the earlier of: (1) actual receipt by the addressee, (2) the date shown on the return receipt of such mailing, or (3) three days after deposit in the mail; and with respect to delivery by overnight courier service, shall be effective upon the earlier of: (1) actual receipt by the addressee, or the day after deposit with the courier service, if delivery on such day is confirmed by the courier orally or in writing.

5.16 **Applicable Law.** Dispute resolution procedural matters shall be governed by the Federal Arbitration Act, Title 9 of the United States Code. This Agreement and the substance of all disputes shall be governed by, enforced, interpreted and construed under the laws of the State of Texas, without regard to its conflict of law principles, provided, however, that notwithstanding the foregoing selection of governing substantive law, if the substance of the dispute is subject matter to which application of the substantive law of the State of Texas would result in the unenforceability, invalidity, void-ness or void-ability in whole or in part of these dispute resolution provisions or this Agreement, then the substance of the dispute shall be governed by the substantive law of the State or U.S. Territory that is the location where Customer accessed the Website when the claim accrued, without regard to its conflicts of law principles.. Venue for any mediation, arbitration or other action to enforce this Agreement shall be in Houston, Texas.

5.17 **Dispute Resolution.** All disputes, claims and other matters in controversy arising out of or related to this Agreement, or the breach thereof, shall be submitted first to mediation, as a condition precedent to any litigation, by written notice to the other Party. The mediator will be selected by

agreement of the Parties or, if the Parties cannot agree on a mediator, the mediation will be conducted under the Commercial Rules of the American Arbitration Association (“AAA”), administered through its Houston, Texas office, at the request of a Party. Each Party will bear its own costs in the mediation. The fees and expenses of the mediator will be shared equally by the Parties. If a claim, dispute or other controversy cannot be resolved within ninety days after the written notice beginning the mediation process (or a longer period, if the Parties agree to extend the mediation), the mediation shall terminate and the claim, dispute or other controversy shall be decided by arbitration under the Commercial Rules of the American Arbitration Association (“AAA”), administered through its Houston, Texas office. If selection of Houston, Texas as the geographical seat for the arbitral tribunal would result in the unenforceability, invalidity, void-ness or void-ability in whole or in part of these dispute resolution provisions or this Agreement, then the geographical seat for the arbitral tribunal shall be the State or U.S. Territory where Customer accessed the Website when the claim accrued. The arbitration shall be conducted by a single Arbitrator, and the award of the Arbitrator shall be final and binding, and shall be enforceable in a court of competent jurisdiction. The prevailing party in any arbitration shall be awarded all costs of arbitration and enforcement of the arbitration award, including but not limited to reasonable attorneys’ fees and administrative costs.

5.18 Miscellaneous Provisions.

5.18.1 The headings contained herein are inserted for convenience only and shall not be deemed to have any substantive meaning.

5.18.2 If any provision of this Agreement is determined by the Arbitrator(s) to be invalid, void or unenforceable in any manner, the remaining provisions of this Agreement shall nonetheless continue in full force and effect, without being impaired or invalidated in any way. In addition, if any provision of this Agreement may be modified by a court of competent jurisdiction such that it may be enforced, then that provision shall be so modified and as modified shall be fully enforced.

5.18.3 Except as otherwise stated in this Agreement, this Agreement contains the entire understanding of the Parties respect to its subject matter, and supersedes all prior or contemporaneous agreements, understandings and negotiations. No modification or alteration of this Agreement shall be deemed effective unless in writing and signed by the Parties.

5.18.4 The terms used in this Agreement, regardless of the number and gender in which they are used, shall be construed to include the other number (singular or plural), and other genders (masculine, feminine or neuter), as the context or sense of this Agreement or any paragraph or clause may require.

5.18.5 This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which shall constitute one Agreement. The signature of any Party to any counterpart shall be deemed to be a signature to, and may be appended to, any other counterpart. Facsimile or scanned signatures shall be deemed effective as originals.

5.18.6 Each Party agrees to sign and deliver all documents, instruments, certificates and applications reasonably necessary to consummate the transactions contemplated by this Agreement.

5.18.7 Each of the Parties acknowledges that they and their counsel have reviewed this Agreement and suggested changes to its language. Therefore, any rule of construction that any ambiguity shall be construed against the drafter of this Agreement shall not apply in interpreting the provisions of this Agreement.

5.18.8 This Agreement is solely for the benefit of the Parties hereto, and shall not confer upon third parties any remedy, claims or actions, or other right.

6. TERMINATION

6.1 **Termination for Convenience.** Either Party may terminate this Agreement for its convenience upon giving the other Party thirty (30) days written notice of termination. MacroFab shall perform and complete and Customer shall pay MacroFab for all Services ordered by Customer prior to the date of

termination. Customer shall make arrangements for the removal of all Customer Goods from the Warehouse at Customer's expense, prior to the date of termination.

6.2 **Termination for Cause.** Either Party may terminate this Agreement for default after five (5) days written notice to the defaulting Party and the defaulting Party's failure to pay any sum due under the Agreement, or failure to cure or commence and diligently pursue cure of any other default. The Parties' rights and remedies under this Agreement are in addition to all other rights and remedies available at law or in equity.

I AGREE