



## **GENERAL TERMS AND CONDITIONS OF SALE**

### **ARTICLE I – APPLICABILITY**

These terms and conditions of sale (these "**Terms**") are the only terms which govern the provision of services ("**Services**") by DONATO ENTERPRISES, INC., a Michigan corporation ("**Service Provider**") to the Customer named on the proposal or quote to which these Terms are attached and/or referenced ("**Customer**"). These Terms prevail over any of Customer's general terms and conditions of purchase regardless whether or when Customer has submitted its request for proposal, order, or such terms. Fulfillment of Customer's order does not constitute acceptance of any of Customer's terms and conditions and does not serve to modify or amend these Terms. The Agreement comprises the entire Agreement between the parties, and supersedes all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. In the event of a conflict between these terms and a quote issued by Service Provider, the terms in such quote shall control.

### **ARTICLE II – DEFINITIONS**

Whenever used in this Agreement, the following terms shall have the following meanings respectively, unless otherwise specified:

- (A) "Agreement" means these Terms and the quote issued by Service Provider;
- (B) "Goods" means a unit of (semi-)finished Goods manufactured by Customer;
- (D) "Lot" refers to a group of Goods designated by Customer for tracking and reporting purposes.

### **ARTICLE III – SERVICING OF GOODS**

3.1 Service Provider shall provide Customer with details of the servicing in the form of I-Charts (charts that display information regarding the findings of the sorting process) after the sort has been completed.

3.2 Service Provider may, at Customer's request, hold the goods after servicing for up to 30 days. After 30 days, warehousing charges, as determined by Service Provider, in its sole discretion, shall apply.

### **ARTICLE IV – PRODUCT PRICING AND PAYMENT**

4.1 Customer shall purchase the Services from Service Provider at the prices (the "**Prices**") set forth in Service

Provider's proposal or quote, as may be updated by Service Provider. If the Prices should be increased by Service Provider before sorting is completed, then these Terms shall be construed as if the increased prices were originally inserted herein, and Customer shall be billed by Service Provider on the basis of such increased prices. Customer agrees to reimburse Service Provider for all reasonable travel and out-of-pocket expenses incurred by Service Provider in connection with the performance of the Services. All Prices are exclusive of any and all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any governmental authority on any amounts payable by Customer. Customer shall be responsible for all such charges, costs and taxes.

4.2 Payment shall be made by Customer within 30 days from the invoice date. After 30 days from the invoice date Customer will pay interest on overdue accounts at a rate of 1.5 percent (1.5%) PER MONTH. Furthermore, all bank charges and/or discounts charged by the bank in association with the payment will be the responsibility of the Customer. In addition to all other remedies available under these Terms or at law (which Service Provider does not waive by the exercise of any rights hereunder), Service Provider shall be entitled to suspend the performance of any Services if Customer fails to pay any amounts when due hereunder. Customer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Service Provider.

4.3 All estimates from Service Provider are to be considered estimates ONLY. They are not finalized prices until a Lot has been processed by Service Provider and the price in the estimate is approved by a Service Provider representative.

4.4 All prices per specific Good (as stated in the estimate/quote) are subject to change as necessary by Service Provider. Service Provider may change this price based on rising labor costs, unexpected run speeds, or any other reason that Service Provider deems necessary. When the price is changed Service Provider will notify Customer in writing and the new price will be updated effective immediately.

### **ARTICLE V – CHANGES IN PRODUCT**

Customer shall promptly provide Service Provider with details of any changes or developments made to the Goods including but not limited to changes in material, shape, design, process, or criteria immediately once the changes have been made. Prices are subject to increase, at Service Provider's sole discretion, in relation to any Customer modifications to the Goods.

### **ARTICLE VI – REPRESENTATIONS AND WARRANTIES OF Customer; COVENANTS**

6.1 Customer represents and warrants to Service Provider, acknowledging that Service Provider is relying upon such

representations and warranties in connection with its entering into this Agreement, as follows: (a) Customer has all requisite power and authority to execute and deliver this Agreement and has all necessary power and authority to perform the obligations of Customer as set out herein; (b) the entering into of this Agreement will not result in the violation of any of the terms and provisions of any agreement, written or oral, to which Customer may be a party; (c) the execution and delivery of this Agreement has been duly authorized by all necessary action on the part of Customer and this Agreement, when duly executed and delivered by Customer, will constitute a legal and binding obligation of Customer enforceable in accordance with its terms; and (d) the performance by Customer of all its obligations hereunder will be conducted in compliance with all applicable laws.

6.2 Any visits to the facilities of Service Provider by any representative of Customer will be under the supervision of an authorized representative of Service Provider and absolutely no video or audio recordings or photographs will be allowed. Any attempt to photograph, or record audio or video will be a breach of this agreement.

6.3 If Service Provider's performance of its obligations under this Agreement is prevented or delayed by any act or omission of Customer or its agents, subcontractors, consultants, or employees, Service Provider shall not be deemed in breach of its obligations under this Agreement or otherwise liable for any costs, charges, or losses sustained or incurred by Customer, in each case, to the extent arising directly or indirectly from such prevention or delay.

6.4 During the term of this Agreement, Customer shall, at its own expense, maintain and carry insurance in full force and effect which includes, but is not limited to, commercial general liability in a sum no less than \$1,000,000 with financially sound and reputable insurers. Upon Service Provider's request, Customer shall provide Service Provider with a certificate of insurance from Customer's insurer evidencing the insurance coverage specified in these Terms.

#### **ARTICLE VII – NO WARRANTY**

**SERVICE PROVIDER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE SERVICES, INCLUDING, WITHOUT LIMITATION ANY (a) WARRANTY OF MERCHANTABILITY; OR (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; OR (c) WARRANTY OF TITLE; OR (d) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE.**

#### **ARTICLE VIII – INTELLECTUAL PROPERTY**

8.1 Customer authorizes Service Provider, for the purposes of exercising its rights and performing its obligations under this contract to use the technology and any intellectual property of Customer in respect of the technology.

8.2 Customer shall promptly and fully notify Service Provider of any actual or threatened infringement of any of the Customer's intellectual property.

8.3 The title to and all intellectual property rights in respect of any improvement made, developed or acquired by either party for the servicing process shall belong to Service Provider. Customer may NOT use any process developed or acquired by Service Provider to service their own Goods. Customer may NOT supply any other vendor with the intellectual property or processes used and developed by either party.

#### **ARTICLE IX – LIMITATION OF LIABILITY; NO SETOFF**

**9.1 IN NO EVENT SHALL SERVICE PROVIDER BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT OR LOSS OF DATA OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT Service Provider HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.**

**IN NO EVENT SHALL SERVICE PROVIDER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNT PAID TO Service Provider FOR THE SERVICES SOLD HEREUNDER PURSUANT TO THE INDIVIDUAL QUOTE PURSUANT TO WHICH SUCH SERVICES WERE PROVIDED.**

9.2 Customer shall have no right to setoff.

#### **ARTICLE X – MISCELLANEOUS**

10.1 Service Provider shall not be responsible for any delay or damages caused by events or circumstances beyond its reasonable control, including without limitation acts of God,

fire, storms, floods, snow, ice, wars, hostilities, compliance with laws or regulation.

10.2 The parties agree that the validity, operation and performance of this Agreement shall be governed by and interpreted in accordance with the laws of Michigan without regard to conflicts of laws principles. Any legal suit, action, or proceeding arising out of or relating to this Agreement shall be instituted in the federal courts located in the Eastern District of Michigan or the courts of the State of Michigan located in St. Clair County, Michigan, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.

10.3 Customer shall pay all attorneys fees and reasonable costs of Service Provider to enforce any of the terms and conditions of the agreement or to recover possession of any of its equipment.

10.4 This Agreement may not be amended or otherwise modified except in writing signed by an authorized representative of each party.

10.5 If any provision of this Agreement shall, to any extent, be held to be invalid or unenforceable, it shall be deemed to be separate and severable from the remaining provisions of this Agreement, which shall remain in full force and effect and be binding as though the invalid or unenforceable provision had not been included.

10.6 No waiver by Service Provider of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Service Provider. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

10.7 All non-public, confidential or proprietary information of Service Provider, including but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts, or rebates, disclosed by Service Provider to Customer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated, or otherwise identified as "confidential" in connection with this Agreement is confidential, solely for the use of performing this Agreement and may not be disclosed or copied unless authorized in advance by Service Provider in writing. Upon Service Provider's request, Customer shall promptly return all documents and other materials received from Service Provider. Service Provider shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the public domain; (b) known to Customer at the time of disclosure; or (c) rightfully obtained by Customer on a non-confidential basis from a third party.

10.8 The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

10.9 This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of these Terms.