

Terms & Conditions

Documentation. Your Proto Order Agreement (the “Agreement” or “Terms”) consists of the following documents, which together form the complete and binding agreement between the Customer (“you”) and Proto (“Company”) governing the purchase, licensing, and use of any Proto device, software, or related services:

- (i) Final Price Sheet
- (ii) Terms & Conditions
- (iii) Software License
- (iv) Warranty
- (v) Privacy Policy
- (vi) Refund & Return Policy
- (vii) Media Services & EULA
- (viii) Cloud Agreement

1. Agreement to Purchase. You agree to purchase the Proto device (the “Device”) described in your Final Price Sheet from Proto, Inc. or its affiliate distributor(s) (“we,” “us” or “our”), pursuant to the terms and conditions of this Agreement. Your Device is priced and configured based on features and options available at the time of order. Options, features or hardware released or changed after you place your order may not be included in or available for your Device.

2. Purchase Price, Taxes and Official Fees. The purchase price of the Device is indicated in your Final Price Sheet. The cost for each device is exclusive of applicable value-added, sales, excise, customs duties or other similar taxes (“Taxes”), relating to the sale, purchase, transfer of ownership, delivery, installation, or license of the Device. The final Taxes and government fees of the Device may change depending on many factors, such as where you purchase the Device, and they will be calculated closer to the time of delivery and indicated on your Final Price Sheet. You are responsible for paying these Taxes and fees. We may elect to charge you interest at the rate of 2% per month (or the highest rate permitted by law, if less) on all late payments.

3. Prepaid Credits & Credit Ledger. “Credits” are prepaid, limited purpose units that may be redeemed solely to access and use Proto’s cloud-based or API-based services (collectively, “Services”). Credits are not legal tender, not a stored-value card, gift certificate, or deposit, have no cash value, and are non-transferrable except with Proto’s prior written consent. Credits are sold in bundles and recorded to your account’s Credit Ledger upon successful payment. Credits represent a prepayment for Services and are deemed consumed when the Credit Ledger records a debit for a completed job. Each Service consumes Credits according to the Service Rate Card posted in the dashboard or documentation, which may use fixed increments (e.g., per 30-second block) and is rounded up to the next increment. The Credit Ledger is conclusive proof of consumption absent manifest error. Credits granted at no charge (e.g., promotional, trial, or bonus Credits) are non-refundable, non-transferable, and may expire on the date shown in your account (e.g., 6-months from purchase). If any paid Credit purchase is refunded, Proto may cancel or claw back associated promotional Credits.

3.1 Expiration & Inactivity. Paid Credits do not expire, except as required by law. If your account is inactive for 18 months, Proto may notify you and, if you do not respond, suspend the account and

comply with any applicable unclaimed property/escheat obligations. Promotional Credits may expire sooner as stated in your account.

3.2 Taxes. Taxes may apply to the purchase of Credits and the redemption of Credits for Services, depending on jurisdiction. You are responsible for all applicable Taxes; tax treatment will be reflected on your receipts.

3.3 Resale; Assignment; & Security Interest. Credits may not be resold, assigned, or pledged. Any attempt to transfer Credits in violation of this Agreement is void.

3.4 Fraud and Abuse. Proto may suspend or adjust a Credit balance, or suspend Services, if we reasonably suspect fraud, abuse, or mismeasurement. We will maintain audit logs to substantiate any adjustments.

3.5 Refunds & Re-credits. Credit refunds are governed by the Refund & Return Policy (Digital Credits & Services Refunds). Used Credits are not refundable. Credits are automatically re-credited when a job fails or cannot complete for reasons within Proto's control. Dissatisfaction with output quality is not a ground for a refund, but we will re-credit for a verified generation error.

3.6 Rate Changes & Multipliers. The number of Credits required for a Service may change due to vendor, infrastructure, or feature changes. Material increases may not be announced in advance and will not affect jobs submitted before the effective date.

3.7 Chargebacks. If a Credit purchase is charged back or reversed, Proto may deduct the equivalent Credits from your balance, void related promotional Credits, and suspend your account pending resolution.

4. Order Process; Cancellation; Changes. After you submit your completed order, we will begin the process of preparing and coordinating your Device for delivery. If you make changes to your order, you may be subject to potential price increases for any price adjustments made since your original order date. Any changes made by you to your Device order, including changes to the delivery location or estimated delivery date, will be reflected in a subsequent Final Price Sheet that will form part of this Agreement. This Agreement is not made or entered into in anticipation of or pending any conditional sale contract. PROTO has the right to terminate this Agreement should you fail to pay the amount due on your Final Price Sheet at least fifteen (15) days prior to the activation date as set forth on your Final Price Sheet.

5. Delivery. PROTO will arrange for delivery of the Device with a common carrier of its choosing. The risk of loss passes to you at the time the Device is delivered to you. The estimated delivery date of your Device, if provided, is only an estimate as we do not guarantee when your Device will actually be delivered. Your actual delivery date is dependent on many factors, including supplies and manufacturing availability.

6. Obsolete Hardware and Future Firmware Updates. The Device will regularly receive over-the air software updates that add new features and enhance existing ones over Wi-Fi. Future software updates may not be provided for your Device, or may not include all existing or new features or functionality, due to your Device's age, configuration, data storage capacity or parts, after the expiration of your Warranty. We are not liable for any parts, labor or any other cost needed to update or retrofit the Device so that it may receive these updates, or any Device issues occurring after the installation of any software updates due to obsolete, malfunctioning (except as covered by your Warranty) or damaged hardware.

7. Your Responsibilities. You will: (a) be solely responsible for all use of your Device under your Proto account, along with any third party software application or service that you make available to end users that interfaces with the Device (each, a “Customer Application”); (b) not transfer, resell, lease, license, or otherwise make available Proto’s software to third parties (unless you are an authorized distributor, reseller, or agent of Proto and except to make Proto’s software available to end users as a license in connection with the use of each Device as permitted under this Agreement); (c) be solely responsible for all acts, omissions, and activities of anyone who accesses or otherwise uses any Customer Application; and (d) provide reasonable cooperation regarding information request from law enforcement, regulators, or telecommunications providers.

7.1 We will not be liable for any loss or damage arising from unauthorized use of your account. If you are the party that accepted these Terms and you re-assign your account to a third party reseller for administration purposes, such account re-assignment will not excuse your obligations under these Terms. Your use of the Proto Cloud, Software or Device will continue to be subject to these Terms.

8. Use of Marks. You grant us the right to use your name, logo, and a description of your use case to refer to you on our website, earnings releases and calls, or marketing or promotional materials, subject to your standard trademark usage guidelines that you expressly provide to us.

9. Indemnification by Us. Subject to the limitations in this Section 8, Proto will defend you from and against any third-party claim, suit, or proceeding made or brought against you by a third party alleging that the Device infringes or misappropriates such third party’s intellectual property rights (“Infringement Claim”). We will indemnify you from any damages, fines or penalties imposed by a government or regulatory body, attorneys’ fees, and costs awarded against you or for settlement amounts approved by us for an Infringement Claim.

9.1 Infringement Options. If our Device has become, or in our opinion is likely to become, the subject of any Infringement Claim, we may at our option and expense: (a) procure the right to continue providing services for the Device as set forth in these Terms; (b) modify the Device to make it non-infringing; or (c) if the foregoing options are not reasonably practicable, terminate these Terms, or, if applicable, terminate certain Device functionality or features that are the subject of any Infringement Claim, and refund you any unused pre-paid fees.

9.2 Limitations. We will have no liability or obligation under this Section 8 with respect to any Infringement Claim (a) arising out of your use of the Device in breach of these Terms; (b) arising out of the combination, operation, or use of the Device with other applications, portions of applications, products, or services where the Device would not by itself be infringing; or (c) arising from the Device for which there is no charge.

10. Indemnification by You. You will defend us, our officers, directors, employees, and affiliates (collectively, “Proto Indemnified Parties”) from and against any claim, demand, suit, or proceeding made or brought against a Proto Indemnified Party by a third party alleging or arising out of (a) your or any of your end user’s breach of Section 6 (Your Responsibilities) or (b) indemnify, and hold harmless us, our affiliates and licensors, and each of their respective employees, officers, directors, and representatives from and against any losses arising out of or relating to any third-party claim concerning: (i) your or any of your end user’s use of the Device (including any activities under your Proto account and use by your employees and personnel); (ii) breach of this Agreement or violation of applicable law by you, your end users or your content; or (iii) a dispute between you and any of your end users. You will reimburse us for reasonable attorneys’ fees, as well as our employees’ and contractors’ time and materials spent responding to any third party subpoena or other compulsory legal order or process associated with third party claims described in (a) through (b) above at our then-current hourly rates.

11. Limitation of Liability.

11.1 Limitation on Indirect, Consequential, and Related Damages. In no event will either party have any liability arising out of or related to this Agreement for any lost profits, revenues, goodwill, or indirect, special, incidental, consequential, cover, lost data, business interruption, or punitive damages, whether an action is in contract or tort and regardless of the theory of liability, even if a Party has been advised of the possibility of such damages or if a party's remedy otherwise fails of its essential purpose. The foregoing disclaimer will not apply to the extent prohibited by law.

11.2 Limitation of Liability. In no event will the aggregate liability of either party arising out of or related to this Agreement exceed the amounts paid or payable by you under these Terms for the Device or services giving rise to the liability during the twelve (12) month period preceding the first incident out of which the liability arose. The foregoing limitation will apply whether an action is contract or tort and regardless of the theory of liability.

11.3 Exceptions to the Limitation of Liability. Notwithstanding anything to the contrary in Section 10.1 (Limitation on Indirect, Consequential, and Related Damages) and Section 11.2 (Limitation of Liability) the limitations in Section 11.1 and 11.2 do not apply to (a) your breach of Section 2 (Purchase Price, Taxes and Official Fees); (b) your breach of Section 7 (Your Responsibilities); or (c) Your breach of Sections 9 and 10 (Indemnification by Us and Indemnification by You).

11.4 The provisions of this Section 11 allocate the risks pursuant to these Terms between the parties, and the parties have relied on the limitations set forth in this Section 10 in determining whether to enter into or otherwise accept these terms.

12. Term, Termination, and Survival.

12.1 Term. These Terms, as may be updated from time to time, will commence on the date they are accepted by you and continue until terminated in accordance with Section 12.2 (Termination).

12.2 Termination. Either Party may terminate these Terms for convenience upon thirty (30) days written notice to the other Party. Notwithstanding and in addition to the preceding sentence, if there is a Final Price Sheet in effect, then the Final Price Sheet's term will govern unless there is a material breach of these Terms, at which case we may immediately terminate these Terms (including all Final Price Sheets and orders) and close all of your Proto accounts.

12.3 Survival. Upon termination of these Terms, the terms of this Section 12.3, and the terms of the following Sections will survive: Section 2 (Purchase Price, Taxes and Official Fees), Section 7 (Your Responsibilities), Section 9 (Indemnification by Us), Section 10 (Indemnification by You), Section 11 (Limitation of Liability), Section 13.5 (Dispute Resolution), Section 13.6 (Governing Law and Venue), Section 12.7 (Class Action Waiver).

13. General.

13.1 No Waiver of Order of Precedence. No failure or delay by either party in exercising any right or enforcing any provision under these Terms will constitute a waiver of that right, provision, or any other provision. Any waiver must be in writing and signed by each party to be legally binding. Titles and headings of sections of these Terms are for convenience only and will not affect the construction of any provision of these Terms. In the event of any conflict or inconsistency among the following documents, the order of preference will be: (1) the applicable Final Price Sheet, (2) this Agreement,

(3) the applicable documents that collectively form this Agreement, and (4) any other terms incorporated by reference herein.

13.2 Assignment. You will not assign, delegate, or otherwise transfer this Agreement, in whole or in part, without our prior written consent. Any attempt by you to assign, or transfer this Agreement without our consent will be null and void. We may assign, delegate, or otherwise transfer this Agreement in whole or in part, without your consent. Subject to this Section 13.2, this Agreement will be binding on each party and each party's successors and assigns.

13.3 Severability. If any provision of this Agreement is held by an arbitrator or a court or other tribunal of competent jurisdiction to be unenforceable, that provision will be limited or eliminated to the minimum extent necessary to make it enforceable and, in any event, the rest of this Agreement will continue in full force and effect.

13.4 Force Majeure. No failure, delay, or default in performance of any obligation of a party will constitute an event of default or breach of these Terms to the extent that such failure to perform, delay, or default arises out of a cause, existing or future, that is beyond the control and without negligence of such party, including action or inaction of governmental, civil, or military authority, fire, strike, lockout, or other labor dispute, flood, terrorist act, war, riot, theft, earthquake, or other natural disaster. The party affected by such cause will take all reasonable actions to minimize the consequences of such cause.

13.5 Dispute Resolution. In the event of a dispute, claim, or controversy arising out of or in connection with this Agreement or the breach, termination, enforcement, interpretation, or validity thereof (other than for disputes, claims, or controversies related to the intellectual property of a party) (collectively, "Disputes"), each party's senior representatives will engage in good faith negotiations with the other party's senior representatives to amicably resolve a Dispute. If the parties are unable to resolve a Dispute within thirty (30) days after the first request to engage in good faith negotiations or within such other time period as the parties may agree to in writing, then either party may commence binding arbitration under JAMS' Comprehensive Arbitration Rules and Procedures (www.jamsadr.com). The parties will share equally the fees and expenses of the JAMS arbitrator. The arbitration will be conducted by a sole arbitrator chosen by the mutual agreement of the parties and will be either (1) a retired judge or (2) an attorney specifically licensed to practice law in the State of California and will be selected by the parties from the JAMS' roster of commercial dispute arbitrators. If the parties are unable to agree upon an Arbitrator within seven (7) days of delivery of the demand for arbitration, then JAMS will appoint the arbitrator in accordance with its rules. Judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction. The arbitrator will have the authority to grant specific performance or any other equitable or legal remedy, including provisional remedies. Each party will be responsible for its own incurred expenses arising out of any dispute resolution procedure. Any arbitration proceedings will take place in Los Angeles, California.

13.6 Governing Law and Venue. This Agreement will be governed by and interpreted in accordance with the laws of the State of California, without regard to conflicts of laws and principles that would cause the laws of another jurisdiction to apply. This Agreement will not be governed by the United Nations Convention on Contracts for the International Sale of Goods. Except as provided in Section 13.5 (Dispute Resolution), any suit, action, or proceeding arising out of or related to this Agreement or the Device related to the intellectual property of a party will be instituted in the applicable courts within the County of San Diego, State of California.

13.7 Class Action Waiver. Each party agrees that any Disputes between the parties must be brought against each other on an individual basis only. That means neither party can bring a Dispute as a plaintiff or class member in a class action, consolidated action, or representative action. An arbitrator cannot combine more than one person's or entity's Disputes into a single case and cannot preside over any consolidated class or representative proceeding. Each party agrees the arbitrator's decision or award in one person's or entity's case can only impact the person or entity that brought a Dispute and cannot impact or otherwise be used to decide Disputes with other people or entities, including other Proto customers.

13.8 No Resellers; Discontinuation; Cancellation. PROTO, its authorized distributors, resellers and its affiliates sell Devices directly to end users, and we may unilaterally cancel any order that we believe has been made with a view toward resale of the Device or that has otherwise been made in bad faith. We may also cancel your order if we discontinue a product, feature or option after the time you place your order or if we determine that you are acting in bad faith.

13.9 Default and Remedies. You will be in default of this Agreement if you provide false or misleading information in your order, or do anything else the law says is a default. If you are in default, we may, after any legally required notice or waiting period: (a) do anything to protect our interest in the Device, including repossessing the Device using legally permitted means; (b) locate and disable the Device electronically remotely; (c) bring an appropriate action to recover the Device; and (d) charge you for amounts we spend taking these actions.

This Agreement is entered into and effective as of the date you accept this Agreement, by electronic means or otherwise. By confirming and accepting this Agreement, you agree to the terms and conditions of this Agreement and all Documentation referred to herein.