

- [1] Services: typical services provided by ProtoMEMS in the process of fulfilling a Customer's request may include, but are not limited to: CAD Layout & Design, Mask Production, Resist Processing (Cleaning, Priming, Spinning/Spraying, Softbaking, Exposing, Developing, Hardbaking, Descuming), Lithography (Optical, Contact or Ebeam), Reactive Ion Etching, Wet Etching, Thin Film Deposition, Test & Metrology, Furnace Processing, Microscopy, Wafer Bonding, Ion Implantation & Thermal Activation, Electroplating, Critical Point Drying, or any number of Other Services (Report Writing, Phone Discussions, Composition of Process Documentation, Internet Searches, Consultation with CNF Staff, Strategic Process Planning, Review of Scientific Journals, Review of Patents, etc) that are germane to the scope of the project at hand.
- [2] Time & Materials: typically, ProtoMEMS will conduct work on a Time & Materials basis. At the start of a new job, ProtoMEMS will estimate the number of labor hours necessary to complete the work and the experience level required for the person(s) doing the work (Senior Scientist vs Junior-Level). In addition, ProtoMEMS will make an estimate of the materials required. More often than not, the Customer will provide the starting materials (at cost).
- [3] Best Efforts: ProtoMEMS, in good faith, shall do all that it reasonably can, to satisfy the technical requirements of any order within the estimated number of labor hours. However, there are often unknown aspects associated with the nanofabrication of prototypical devices. As a result, ProtoMEMS will conduct this work on a "Best Efforts" basis only, with the understanding that there may need to be certain compromises made by the Customer during the nanofabrication process which are not clear at this time. Customer recognizes that there may be additional time required (i.e. additional funds) to complete the work to their satisfaction, depending on how the project evolves.
- [4] Purchase Orders: work will commence immediately upon receipt of a bonafied Purchase Order, against which billable hours will be invoiced on a periodic basis. Under no circumstances will any work be done without a fully-executed Purchase Order. Typically, a Purchase Order is placed electronically as an email pdf attachment.
- [5] Payment Terms: payment for services rendered in accordance with a Purchase Order (including any and all Approved Purchases and/or Reimbursable Expenses) shall be made within 30 calendar days of receipt of a monthly invoice (i.e. net-30 days). Invoices shall provide a brief listing of the tasks performed, the date on which the task was completed and the amount of time devoted to each task, including a list of Approved Purchases and/or Reimbursable Expenses. ProtoMEMS is solely responsible for the payment of income, social security, and other employment taxes due to the proper tax authorities. Customer will not deduct taxes from any payments made to ProtoMEMS. All invoices will be submitted electronically as a pdf email attachment.

- [6] Tool Rental Fees: wafers will be processed by ProtoMEMS on behalf of the Customer at the Cornell NanoScale Facility (CNF), the Cornell Center for Materials Research (CCMR) or the Cornell Nano-Bio-Technology Center (NBTC) in Ithaca, NY. Equipment rental time will be direct-billed by Cornell. Customer is solely responsible for the payment of all tool rental fees. ProtoMEMS assumes no responsibility for paying tool rental fees. ProtoMEMS has no contractual affiliation with the CNF, CCMR or NBTC. As such, ProtoMEMS assumes no responsibility for the tool rental rates charged by these organizations nor are we responsible for tool down time, repair and/or maintenance.
- [7] Work Location: the majority of the work is to be conducted at the Cornell NanoScale Facility (CNF), the Cornell Center for Materials Research (CCMR) or the Cornell Nano-Bio-Technology Center (NBTC) in Ithaca, NY. Additional opportunities may exist at Other Locations within the National Nanotechnology Infrastructure Network (NNIN). A small portion of the work may also be conducted at ProtoMEMS' office/laboratory facilities in Trumansburg, NY.
- [8] Approved Purchases: during the micro/nano fabrication effort, Customer agrees to pay ProtoMEMS for any Approved Purchases. Approved Purchases may include, but are not limited to: tweezers, mask blanks, wafers and/or any other items or objects that are directly germane to the services requested. All Approved Purchases shall be pre-approved, prior to purchase, by Customer.
- [9] Reimbursable Expenses: during the micro/nano fabrication effort, Customer agrees to pay ProtoMEMS for any Reimbursable Expenses. Reimbursable Expenses may include, but are not limited to: packaging expenses (i.e. bubble wrap, packing tape, etc), shipping expenses (i.e. FedEx or UPS), travel expenses (food, lodging, transportation), postage, printing expenses, electronic storage media (USB flash memory stick, etc). All Reimbursable Expenses shall be pre-approved, prior to purchase, by Customer.
- [10] Customer-Supplied Substrates: on occasion, Customer will supply substrates to ProtoMEMS for further processing in the CNF, CCMR and/or NBTC. During the normal course of processing customer-supplied substrates, there is always some finite risk of damage. ProtoMEMS will (at all times) attempt to minimize the risk of damage. However, ProtoMEMS assumes no responsibility or liability for any such damage and is not responsible for replacement costs of any customer-supplied substrates.
- [11] Storage of Work Product: while processing wafers in the CNF, CCMR and/or NBTC (multi-user facilities), from time to time, it will be necessary to store the Customers wafers at some intermediate level of completion in ProtoMEMS-designated bins and/or drawers. For example, over-night, during weekends and/or during holiday closures etc. During these times, wafers will be safely stowed away. However, they will not be under lock and key. As such, they may be subject to accidents or other mishaps caused by other users of these facilities. ProtoMEMS assumes no risk or liability for any mishaps or accidents to any work product stored in these areas. For safety purposes, the CNF facility has 24-hr surveillance cameras recording users in their activities. These cameras provide assurance as to possible theft, accident and/or misconduct.

- [12] Customer-Supplied CAD Files: For Customer-Supplied CAD files, ProtoMEMS cannot warrant or attest to the validity, quality and/or design layout of these files. If there are errors in the CAD, ProtoMEMS may have to make changes in the CAD files as necessary to fix them. If new CAD work becomes necessary, it will be billed out by ProtoMEMS at the same rate as CNF/CCMR/NBTC processing time.
- [13] Tool Scheduling: ProtoMEMS will typically schedule the use of several CNF/CCMR/NBTC tools a day or two in advance. This usually keeps the project moving forward at a reasonable pace. However, there are some unpredictable times when a tool will go down for repair or maintenance. Also, there are some times when the user community will over-book a necessary tool. Because these disruptions are beyond our control, ProtoMEMS will not be responsible for such scheduling dilemmas and their impact on the time-line of the proposed work. ProtoMEMS will typically work between the hours of 7am and 6pm, Monday thru Friday. On occasion, for a time-critical job, ProtoMEMS will work over the weekends and/or throughout the evening (i.e. the CNF, CCMR and NBTC are available 24/7). However, higher rates will apply during these times.
- [14] Deliverables: include, but are not limited to: Completed Wafers, Wafer Chips, Processed Devices, Process Documentation, Electronic images (SEM, AFM, Optical Microscope), Process Data, CAD Files, Drawings, Computer Files, Test & Metrology Data, and/or any Other Data that is germane to the scope of the project at hand.
- [15] Project Description: to begin working on a project, a brief "Project Description" must be submitted by the Customer to the CNF, CCMR and/or NBTC Staff, in order to establish a Coral Account (i.e. a login account for using the tools). This brief Project Description will be kept on file at Cornell University while the work is being done.
- [16] Use of Name: neither ProtoMEMS nor Customer shall use the name of the other party in any publicity, marketing or advertising campaign, without the prior written approval of the other party.
- [17] Training: from time to time, Customer may desire ProtoMEMS to train a visiting researcher in the CNF, CCMR or NBTC facilities. Any and all training time will be billed out at the standard rate.
- [18] Packaging: typically, completed wafers and/or devices will be packaged into fluoroware wafer carriers and/or Gelboxes. They are further wrapped in a plastic bag and surrounded by Styrofoam peanuts and/or bubble wrap for safe transport.
- [19] Order Cancellation: after a Purchase Order has been officially placed, Order Cancellation will not be accepted, unless explicitly confirmed via email by ProtoMEMS. Upon Order Cancellation, ProtoMEMS shall be paid for all Services, Approved Purchases and/or Reimbursable Expenses incurred prior to Order Cancellation. Purchase Orders for custom or special devices may not be cancelled. At ProtoMEMS' discretion, a Cancellation Fee of \$50 may be levied to cover paperwork and lost time.

- [20] Payment Method: official check, made payable to ProtoMEMS (please reference Invoice Number).
- [21] Cancelled Checks: in the event that a Customer check has insufficient funds in the account to clear, ProtoMEMS will demand payment immediately via a cashier's check with a \$50 additional administrative fee to be added to the balance owed.
- [22] Independent Contractor: in the performance of Services, ProtoMEMS shall be considered an Independent Contractor. Customer will not pay or withhold federal, state, or local income tax, or other payroll tax of any kind, on behalf of ProtoMEMS or its employees. ProtoMEMS is not eligible for, nor are they entitled to, nor shall they participate in, any of Customer's pension, health, or other benefit plans. ProtoMEMS is responsible for the payment of its own payroll taxes (federal, state, or local in nature), including, but not limited to, income taxes, Social Security taxes, Federal Unemployment Compensation taxes, and/or any other fees, charges, licenses, or payments required by law.
- [23] Taxpayer Identification Number: upon request, ProtoMEMS shall furnish a W9 Form with a bonafide taxpayer identification number in accordance with the Internal Revenue Service.
- [24] Freight on Board: all Deliverables will be shipped FOB Trumansburg, NY, using an insured, courier. Shipping and insurance charges will be pre-paid and added to the total invoice amount.
- [25] Small Business: as of the date above, ProtoMEMS is a privately-owned, small-business.
- [26] Use of Government Facilities: there will be no Government-Owned facilities used in the performance of any Purchase Order.
- [27] Hazardous Substances: there are no hazardous materials or chemicals that will be supplied to Customer in connection with this order.
- [28] Order Confirmation: Purchase Orders are accepted via mail, facsimile transmission, email or telephone. However, ALL ORDERS must be confirmed via pdf as an email attachment.
- [29] Late Payment Penalty: a late payment penalty charge of \$100 per month is levied on all overdue payments past 30 days.
- [30] Patent Rights: whenever an invention or discovery is conceived, or first reduced to practice, by ProtoMEMS as a direct consequence of the financial support provided by Customer and the specific work-product derived from said support, ProtoMEMS shall furnish, at Customer's expense, complete information with respect thereto, and Customer shall own all rights, title and interest in such invention or discovery and determine whether and where a patent application shall be filed. ProtoMEMS shall, at Customer's expense, execute all documents and do all things necessary or proper with respect to such patent application on behalf of Customer.

- [31] Exclusions: Customer acknowledges that there are ideas, processes, trademarks, technology, computer programs, original works of authorship, designs, formulae, inventions, discoveries, patents, copyrights and/or process improvements that are produced within the scope of ProtoMEMS' business relationships with its other customers, partners, vendors and/or other business endeavors. These items are the property of ProtoMEMS and are not subject to Customer's unlicensed use or ownership.
- [32] Insurance: ProtoMEMS has in force comprehensive general liability insurance coverage for bodily injury and broad form property damage with limits of at least \$1,000,000.00 for each occurrence. Upon request, ProtoMEMS shall provide Customer a Certificate of Insurance (COI) confirming our compliance with the levels & type of insurance required.
- [33] Reporting: oral and/or written reporting is to be done on a weekly basis via phone, video conference and/or electronic mail.
- [34] Non-Disclosure of Information: any and all information provided by Customer to ProtoMEMS in support of this work will be held confidential and shall not be given to a third party in any form without the express prior consent of the Customer.
- [35] Release of Wafers, Masks & Final Process Documentation: Wafers, Masks & Final Process Documentation (Electronic Images, Process Data, CAD Files, Drawings, Computer Files, Test & Metrology Data and/or any Other Data that is germane to the overall scope of the project at hand) will be released to the Customer immediately after any and all outstanding invoices have been paid in full.
- [36] Disputes: ProtoMEMS and Customer both recognize that disputes can sometimes arise through no fault of either party during the performance of Services. In the event that this occurs, both parties will seek to resolve the matter in a professional and courteous manner that may require a compromise on the part of both parties. In the event that a dispute cannot be amicably resolved, ProtoMEMS and Customer both agree that any conflicts shall be submitted to the American Arbitration Association for a nonbinding resolution. If and only if the dispute cannot be resolved amicably through third-party arbitration, the parties may each take additional legal actions to resolve the matter.
- [37] Publications: Customer shall have the right to publish any findings that result as a consequence of funding ProtoMEMS to conduct the work. However, ProtoMEMS shall have the right to demand its name, or the name of any of its employees, be excluded from said publication without cause.
- [38] Certification: ProtoMEMS certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from providing services by any federal department or agency.
- [39] Governing Law: Services rendered by ProtoMEMS shall be governed by and construed under the laws of the State of Delaware, which shall be the forum for any lawsuits arising from or incident to the work conducted as a result of a Purchase Order.

[40] Representations & Warranties: ProtoMEMS represents and warrants that it is under no contractual or other restrictions or obligations which are inconsistent with the performance of said Services for Customer.

[41] Indemnification. Customer shall indemnify, defend and hold harmless ProtoMEMS, its future corporate affiliates, current or future directors, officers, employees, staff and their respective successors, heirs and assigns (the “Indemnitees”), against any claim, liability, cost, damage, deficiency, loss, expense or obligation of any kind or nature (including without limitation responsible attorneys’ fees and other costs and expenses of litigation) incurred by or imposed upon the Indemnitees or any one of them in connection with any claims, suits, actions, demands, or judgments arising out of Services provided to Customer (including, but not limited to, actions in the form of tort, warranty, or strict liability).