

PROTERIAL AMERICA, LTD. ("SELLER")
SALES CONFIRMATION AND CONTRACT
GENERAL TERMS AND CONDITIONS

1. ACCEPTANCE

Buyer has read and understands this Contract and agrees that Seller's acceptance of Buyer's order for merchandise as provided on the Sales Confirmation and Contract ("Contract") shall constitute Buyer's acceptance of these terms and conditions only. Buyer shall notify Seller in writing within two (2) business days of receipt of Seller's Contract hereof, if Buyer objects to any of its provisions. The absence of any such notice constitutes acceptance of the Contract and commitment to its terms and conditions.

2. CONFIDENTIALITY

The parties shall treat as trade secrets any and all nonobvious commercial and technical details they learn of through the business relationship created by the Purchase Order. Drawings, models, templates, samples, or similar items may not be made available to unauthorized third parties. The parties may not reproduce any of these items unless permitted within the scope of operational requirements and within the scope of copyright, patent, trademark, or trade-secret law.

(a) Buyer shall not share any of the information regarding the Products, Tooling or Provided Property with any third party, including Buyer's customers, sub-suppliers without Seller's prior written consent.

(b) Buyer shall not use its business relationship with Seller for advertising purposes without Seller's prior written approval.

3. SHIPMENT AND DELIVERY

(a) In the event that Seller does not ship or deliver the merchandise covered by this Contract within the time provided, including the grace period hereinafter provided for, it shall give notice of such fact to Buyer, advising of the new shipping or delivery dates. If Buyer fails to give notice in writing to the Seller within five (5) working days, thereafter of any objections to the change in such shipping or delivery date, this Contract shall be deemed amended in accordance with the change of date set forth in the aforementioned notice given by Seller to Buyer, and Buyer shall accept shipment or delivery as provided in said notice.

(b) All merchandise on which delivery is deferred at the request of the Buyer, or on which delivery is deferred at the option of the Seller under any of the provisions of this Contract, shall be at the risk of the Buyer. Seller, in addition to any other rights or remedies it may have hereunder, may hold and immediately bill such merchandise. In such event, the credit terms shown on the invoice rendered to the Buyer shall have all the rights, remedies and liens that an unpaid Seller can have under the New York Uniform Commercial Code. If Seller defers delivery at

the request of the Buyer or at its option, and whether or not it bills the merchandise as above provided, Buyer shall be liable for interest on the Contract price of the merchandise at the then prevailing prime rate plus one and one half (1.5%) percent per annum from the expiration of the credit term, if any, to date of payment of the invoice, as well as for storage, insurance, handling and charges or expenses incurred by the Seller by reason of the deferred delivery. Buyer shall pay such sums, from time to time, upon demand of the Seller. At the time while Seller is so holding the merchandise, it may, in its sole and absolute discretion, cancel any credit terms extended to the Buyer and proceed in cancelling the remainder of the Contract and any other contracts then existing between Buyer and Seller. Buyer will be held liable for any damage or financial loss resulting to Seller by reason thereof.

- (c) Where Buyer has declared or manifested an intention not to accept the whole or any part or installment of the merchandise under this Contract, no delivery of merchandise shall be necessary and Seller may, at its option, give notice in writing to Buyer that the Seller is ready and willing to deliver in accordance with the provisions of this Contract, and such notice shall constitute a valid tender of delivery and Seller may thereupon proceed as upon a default by Buyer and shall be entitled to all damages arising from or due to such default.

4. TRANSFER OF TITLE

Unless otherwise specified by Buyer and agreed to by Seller, title to goods shall transfer to Buyer when goods are received by Buyer at the destination shown on the Contract hereof.

5. BUYER'S CREDIT/PAYMENT

- (a) This order is given and accepted subject to limit of Buyer's credit determinable at any time by Seller. Seller, in its sole option, may at any time limit, modify or cancel the credit of Buyer and may demand payment in cash before shipment or delivery of the whole or any part of the merchandise. Upon failure of Buyer to make any such payment after demand, Seller may cancel the remainder of the Contract. Delivery may be made in installments. A default in any payment by Buyer after delivery or offer of delivery of any installment may at the option of Seller be deemed a default in the entire Contract. Upon any such default or upon any other default or breach of this Contract by Buyer, Seller, at its option, may cancel this Contract, and/or may defer shipment or delivery until such default or breach is cured and/or may cancel any undelivered portions of this or such other orders and/or may demand immediate payment of all outstanding bills of Buyer. In the event of any such cancellation by Seller, Seller shall have the right to recover damages against Buyer and may sell all or any part of the undelivered merchandise without notice to Buyer, at public or private sale, holding Buyer liable for any damage or financial loss resulting to Seller by reason of Buyer's default or breach.

- (b) Unless otherwise specified by Buyer or provided on the Contract, all bills are payable in United States dollars. Buyer shall pay interest at the then prevailing

prime rate plus one and one half (1.5%) percent per annum on all overdue bills from the date thereof.

6. **INSOLVENCY**

Seller may immediately terminate this Contract without liability to Buyer in any of the following or any other comparable events: (a) insolvency of Buyer; (b) filing of a voluntary petition in bankruptcy by Buyer; (c) filing of any involuntary petition in bankruptcy against Buyer; (d) appointment of a receiver or trustee for Buyer; or (e) execution of an assignment for the benefit of creditors by Buyer, provided that such petition, appointment or assignment is not vacated or nullified within 15 days of such event. Buyer shall reimburse Seller for all costs incurred by Seller in connection with any of the foregoing, including, but not limited to, all attorney's or other professional fees.

7. **TERMINATION**

Seller reserves the right to terminate all or any part of this Contract, without liability to Seller, if Buyer repudiates or breaches any of the terms of this Contract and does not correct such failure or breach within 10 days (or such shorter period of time if commercially reasonable under the circumstances) after receipt of written notice from Seller specifying such failure or breach. In addition, Seller may terminate this Contract upon giving at least 60 days' notice to Buyer, without liability to Seller, if Buyer (i) sells, or offers to sell, a material portion of its assets, or (ii) sells or exchanges, or offers to sell or exchange, or causes to be sold or exchanged, a sufficient amount of its stock that effects a change in the control of Buyer.

8. **WARRANTY**

Except as specifically set forth on the Contract: SELLER MAKES NO WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE MERCHANDISE SOLD HEREUNDER, ITS MERCHANTABILITY, QUALITY OR FITNESS FOR ANY PARTICULAR USE OR PURPOSE AND UNDER NO CIRCUMSTANCES SHALL SELLER BE LIABLE FOR LOSS OF PROFITS BY BUYER, OR FOR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES.

9. **PROPRIETARY RIGHTS**

Buyer shall hold Seller harmless against any expense or loss resulting from infringement of patents or trademarks arising from compliance with Buyer's designs or specifications or instruction. Except as otherwise provided in the preceding sentence, Seller shall indemnify, defend, and hold Buyer harmless from and against any claim, suit, action or proceeding ("Claim") brought against Buyer based on an assertion that any product, or any part thereof, furnished under this contract constitutes an infringement of any United States patent or trademark, provided that Seller is notified promptly in writing of the making of any such Claim and is given the right to defend the same and all information and assistance required to do so, and the right to settle the same on terms satisfactory to Seller. In no event, however, shall Seller be liable for any use made by Buyer of any product delivered hereunder which is covered by an adversely held patent. The foregoing states the entire liability

of Seller for patent and trademark infringement by any of said products or any parts thereof.

10. FORCE MAJEURE; LABOR DISRUPTION

This Contract and Seller's performance thereunder are subject to all contingencies beyond Seller's control and beyond the control of Seller's suppliers (whether or not now in contemplation of either of the parties) including but not limited to force majeure, strikes, labor disputes, floods, civil commotion, war, riot, pandemics, epidemics, act of God, rules, laws, orders, actions, seizures, requisitions, instructions, regulations, restrictions, or actions of any government or any agency or subdivision thereof (including any governmental action or investigation under the Federal Anti-dumping Act with respect to the merchandise covered by this contract or any similar merchandise), casualties, fires, accidents, embargos, quotas, shortages of labor, materials, merchandise, fuel, power or transportation facilities, detention of goods by customs authorities, loss of goods in public or private warehouses, inability to or delay in procuring the same from Seller's usual sources or in its usual manner or other casualty or contingency beyond Seller's control or the control of Seller's suppliers or otherwise unavoidable. In any such event, Seller shall have the right at its election and without any liability on it to Buyer, to (a) Cancel all or any portion of this Contract, or (b) perform the Contract as so restricted or modified performance, or (c) perform the Contract within a reasonable time after the causes for nonperformance or delay have terminated.

11. NO IMPLIED WAIVER

The failure of either party at any time to require performance by the other party of any provision of this Contract shall in no way affect the right to require such performance at any time thereafter, nor shall the waiver of either party of a breach of any provision of this Contract constitute a waiver of any succeeding breach of the same or any other provision.

12. NON-ASSIGNMENT

Unless otherwise specifically prohibited by applicable law, Buyer may not assign or delegate its rights or obligations under this Contract without Seller's prior written consent.

13. RELATIONSHIP OF PARTIES

Seller and Buyer are independent contracting parties and nothing in this Contract shall make either party the agent or legal representative of the other for any purpose whatsoever, nor does it grant either party any authority to assume or to create any obligation on behalf of or in the name of the other.

14. SEVERABILITY

If any term(s) of this Contract is invalid or unenforceable under any statute, regulation, ordinance, executive order or other rule of law, such term(s) shall be

deemed reformed or deleted, as the case may be, but only to the extent necessary to comply with such statute, regulation, ordinance, order or rule, and the remaining provisions of this Contract shall remain in full force and effect.

15. ENTIRE AGREEMENT

This is a complete contract and all pages hereof contain the full agreement of the parties including all sales and delivery terms. There are no additional terms, specifications, warranties or representations not expressly contained on the Contract hereof. This Contract and any attachments hereto, constitutes the entire understanding between the parties and supersedes, with respect to the goods or services covered hereby, (a) any prior oral or written communications, representations or agreements, and (b) any additional or different terms and conditions stated by Seller in accepting or acknowledging this order, unless in writing and signed by an officer of Seller or by the appropriate group head of Seller. No rescission, modification or waiver of this Contract or any provision hereof or any right of Buyer shall be binding upon Seller unless in writing and signed by an officer of Seller. No waiver by Seller of any default or breach shall be deemed a waiver of any other prior or subsequent default or breach.

16. GOVERNING LAW; JURISDICTION

Any controversy or claim arising out of, in connection with or relating to this Contract or the interpretation, performance or breach thereof shall be settled by arbitration in the City of New York under the rules of the American Arbitration Association or its successor, and judgment on the award rendered may be entered in any court having jurisdiction thereof. In any arbitration proceeding in which an award is made in favor of Seller, Seller shall be entitled, in addition to other damages awarded to it, to recover from Buyer all of Seller's costs and expenses of the arbitration, including its reasonable attorney's fees. This Contract shall be deemed to have been made in, and its interpretation and performance thereunder shall be governed by the laws of the State of New York.

17. REMEDIES

Seller shall not be limited to its rights and remedies against the Buyer for any cause whatsoever to those set forth in this Contract, but shall have such other rights and remedies as may be available to it, including all rights under the New York Uniform Commercial Code. In addition to any other rights Seller may have under this Contract or by any provision of law, and so long as there shall be, and in order to secure, any obligation due to Seller from Buyer (whether or not under this Contract), the Buyer grants Seller a security interest in all property and funds of Buyer now or hereafter in Seller's possession and all additions, accessions and proceeds thereof, as well as all merchandise in Buyer's possession that were sold to Buyer by Seller, under this Contract or otherwise, and the proceeds and products thereof. Buyer hereby authorizes Seller to sign alone any financing statement or statements and to do all and any other things which may be necessary to perfect such security interest.

18. EXPORT CONTROLS

Neither party shall export, directly or indirectly, any technical data acquired from the other pursuant to this Contract or any product utilizing any such data to any country for which the U.S. Government or any agency thereof at the time of export requires an export license or other governmental approval without first obtaining such license or approval. Buyer agrees to not disclose any information that is subject to export control under the ITAR or under the EAR for control reasons other than anti-terrorism (collectively "export controlled information") without the prior written consent of Seller in each instance.

19. COMPLIANCE WITH LAWS

Seller, and any goods or services supplied by Seller, shall comply with all applicable laws, rules, regulations, orders, conventions, ordinances or standards of the country of destination or that relate to the manufacture, labeling, transportation, importation, exportation, licensing, approval or certification of the goods or services, including, but not limited to, those relating to environmental matters, data protection and privacy, wages, hours and conditions of employment, subcontractor selection, discrimination, occupational health/safety and motor vehicle safety. Seller further represents that neither it nor any of its subcontractors will utilize child, slave, prisoner or any other form of forced or involuntary labor, or engage in abusive employment or corrupt business practices, in the supply of goods or provision of services under this Contract. Seller agrees to comply with all applicable anti-corruption laws, including the U.S. Foreign Corrupt Practices Act, and that neither it nor any of its subcontractors will directly or indirectly provide or offer to provide, anything of value to or for the benefit of, any official or employee of a governmental authority to obtain or retain any contract, business opportunity, or other benefit, or to influence any act or decision of that person in his/her official capacity. In the event the goods ordered herein are purchased for incorporation into merchandise to be sold by Buyer under a United States Government contract or subcontract, the terms required to be inserted herein by that contract or subcontract shall be deemed to apply to this Contract, including the equal opportunity, affirmative action, clean air and water, small business and small disadvantaged businesses clauses prescribed by statute, all of which shall be deemed to be incorporated herein. At Buyer's request, Seller shall certify in writing its compliance with the foregoing. Seller shall indemnify and hold Buyer harmless from and against any liability claims, demands or expenses (including attorney's or other professional fees) arising from or relating to Seller's noncompliance. To the extent applicable, Seller hereby incorporate the requirements of 41 C.F.R. § 60-300.5(a) and 41 C.F.R. § 60-741.5(a). **This contractor and subcontractor shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and**

advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability.

20. CLAIM/ACTION

Any action of any kind against Seller by Buyer must commence within one year from the date such right, claim, demand or cause of action shall first accrue. If Buyer should have any claim or complaint of any kind hereunder other than for non-delivery of the whole or any installment of the merchandise sold hereunder (expressly including, but without limitation, the following: nonconformity of goods to contract; breach of warranty, if any; late delivery; underage or overage in amount; latent defects; violation of any law, rule or regulation including import and labeling regulations), Seller shall not be liable therefore, unless Buyer shall present its written claim to Seller within twenty (20) days after the arrival of the merchandise involved in such claim at destination of any shipment as shown on the Contract hereof or at such other place as designated by Buyer. With regard to claim for latent defects, the aforementioned notice must be given by Buyer within sixty (60) days of arrival of merchandise as above set forth. Such written claim must clearly specify the grounds and nature of the objection and the amount of damages. If claim is made by Buyer as aforesaid, Seller or its agent shall have the right to inspect and/or test the merchandise and upon request of Seller, Buyer is required to have the merchandise tested and/or inspected at its own cost and expense by an independent laboratory, surveyor or inspector and promptly deliver to Seller a duly certified copy of the report issued by such independent laboratory, surveyor or inspector. In no event shall Seller be liable under any claim made hereunder for an amount in excess of the total price of the merchandise under this contract.