

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

1. ACCEPTANCE

Seller's acceptance of Buyer's order for merchandise specified on the face hereof is upon the following express terms and conditions which together with the face of the quotation and the face of said order if accepted by Buyer, shall constitute the entire agreement between the Buyer and the Seller.

2. SHIPMENT AND DELIVERY

(a) In the event that Seller does not ship or deliver the merchandise covered by this agreement within the time promised, including the grace period hereinafter provided for, it shall give notice of such fact to Buyer, advising of the new shipping and delivery dates. If Buyer fails to respond in writing to the Seller, within five (5) working days thereafter of any objections to the change in such shipping or delivery date, the Agreement 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 to 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 agreement, 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 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 agreement price of the merchandise at the then prevailing prime rate plus one and one half (1.5%) percent as well as for storage, insurance, handling and charges or expense 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 any time while the 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 canceling the remainder of the agreement and any other agreements 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 of installment of the merchandise under this agreement, 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 delivery in accordance with the provisions of the agreement and such notice shall constitute 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.

3. 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 face of Buyer's order.

4. BUYER'S CREDIT/PAYMENT/PRICE

(a) The order, if accepted, is subject to limit of Buyer's credit determinable at any time by Seller. Seller, in its sole opinion, may, at any time limit, modify or cancel 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 agreement. 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 agreement. Upon any such default or upon any other default or breach of this agreement by Buyer, Seller, at its option, may cancel this agreement, and/or may defer shipment or delivery until such default of breach is cured and/or may cancel any undelivered portions of the order 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 damages or financial loss resulting to Seller by reason of Buyer's default or breach.

(b) Unless otherwise specified by Buyer or provided in the agreement, 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.

(c) Seller reserves the right, in its sole discretion, and after notice to Buyer, to pass through to Buyer any substantial increase to supply goods or merchandise (including tariffs or duties) that may unexpectedly arise due to any government laws, rules or regulations, including but not limited to executive orders, proclamations, and sanctions.

5. 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 part thereof furnished under this agreement constitutes an infringement of any United States patent or trade-mark, 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 trade-mark infringement by any of said products or parts thereof.

6. 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.

6. WARRANTY

Except as specifically set forth on the face of this quotation: SELLER MAKES NO WARRANTY, EXPRESSED 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.

7. FORCE MAJEURE

This Agreement 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 Agreement or any similar merchandise), casualties, fires, accidents, embargoes, quotas, shortages of labor, materials, merchandise, fuel, power of transportation facilities, detention of goods by customs authorities, loss of goods in a public or private warehouse, 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 limitation on it to Buyer to (a) Cancel all or any portion of this Agreement, or (b) perform the Agreement as so restricted or modified performance, or (c) perform the Agreement within a reasonable time after the causes for non-performance or delay have terminated.

## 8. GOVERNING LAW; JURISDICTION

- (a) Any controversy or claim arising out of, in connection with or relating to this Agreement 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 under the laws of the State of New York. Anything to the contrary contained in said rules and laws notwithstanding, the parties consent that any papers, notices or processes necessary or proper for the institution of continuance of, or relating to any said arbitration proceeding, or for the confirmation of an award and entry of judgment on an award made thereunder, including appeals in connection therewith, may be served upon each of them by any of the following: (1) By registered or certified mail addressed to each of them at their respective addresses shown on the face hereof, or (2) by personal service within or without the State of New York, and the parties hereto severally recognize and consent to the jurisdiction over each of them of the arbitration tribunal of said Association and of the courts of the State of New York, or (3) by any other manner of service permitted under the laws of the State of New York.
- (b) 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 costs and expenses of the arbitration, including its reasonable attorney's fee. In addition to any other rights Seller may have under this Agreement 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 Agreement), the Buyer grants Seller a security interest in all property and funds of Buyer now and 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 Agreement 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.

9. ENTIRE AGREEMENT

This Agreement covering products as listed on the quotation hereof and any attachments hereto, constitutes the entire understanding between the parties and supersedes for all purposes all prior correspondence, the Buyer's order blanks, confirmations or manifolds whether issued before or after this Agreement, and any past or future order, confirmation or Agreement of any agent of either party with respect to the merchandise covered by this Agreement. No rescission, waiver or modification of this Agreement or any provision thereof or any right of Seller of any default or breach shall be deemed a waiver of any other, prior or subsequent default or breach.

10. CLAIM/ACTION

- (a) 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 or goods to Agreement, breach or warranty, if any; later delivery; underage or overage in amount; latent defects; violation of any law, rule, 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 so involved in such claim at destination of any shipment as shown on the face 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 after 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 the claim made hereunder for an amount in excess of the total price of the merchandise under this Agreement.
- (b) 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. Seller shall not be limited in its rights and remedies against Buyer for any cause whatsoever to these set forth in this agreement, but shall have such other rights.

11. NO IMPLIED WAIVER

The failure of either party at any time to require performance by the other party of any provision of this Agreement 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 Agreement 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 Agreement without Seller's prior written consent.
13. **RELATIONSHIP OF PARTIES**  
Seller and Buyer are independent contracting parties and nothing in this agreement 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 Agreement 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 Agreement shall remain in full force and effect.
15. **EXPORT CONTROLS**  
Neither party shall export, directly or indirectly, any technical data acquired from the other pursuant to this Agreement 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 not to disclose any information that is subject to export control under ITAR or under EAR for control reasons other than anti-terrorism (collectively "export controlled information") without the prior written consent of Seller in each instance.