

# TERMS AND CONDITIONS

- 1 Buyer's acceptance of products furnished hereunder shall constitute Buyer's assent to all
- 2 of the terms and conditions on the face and reverse sides hereof.
- 3 Delivery dates shall be computed from the date of Seller's acceptance of Buyer's order or
- 4 orders referred to on the face hereof, and in each case shall be deemed to be an estimate
- 5 of the approximate date or dates of delivery and not a guarantee of a particular day of
- 6 delivery. Seller shall not be liable for any loss or damage, consequential or otherwise,
- 7 caused directly or indirectly by failure or delay in shipping products hereunder if such
- 8 failure or delay is due to an Act of God, war, labor difficulties, accident, inability to obtain
- 9 containers or raw materials or any other cause of any kind beyond Seller's control.
- 10 In addition to the purchase price, Buyer shall pay any tax or other charge which may be
- 11 imposed by any governmental authority on the sale or use of products covered hereby or
- 12 in any way related to such products, provided that in appropriate cases Seller will accept
- 13 from Buyer a tax exemption certificate in form satisfactory to the taxing authority.
- 14 Seller warrants only that all products shall be free from defects in materials and workman-
- 15 ship for not more than 1 year after shipment and shall be designed in accordance with
- 16 specifications furnished by Buyer, documented by Buyer's blueprints or drawing or, if
- 17 specifications so documented are not furnished by Buyer, in accordance with specifica-
- 18 tions established by ProtTek Devices.
- 19 **Seller otherwise makes no warranty, express or implied and specifically**
- 20 **disclaims any implied warranty of merchantability or fitness for a par-**
- 21 **ticular purpose which exceeds the foregoing warranties.**
- 22 In the event any product sold by Seller to Buyer hereunder does not conform to the afore
- 23 said warranties, Seller's sole responsibility shall be to replace such product and Seller shall
- 24 not be liable for any consequential damages, loss or expense arising in connection with the
- 25 use of or the inability to use such product for any purpose whatsoever. Seller's maximum
- 26 liability shall not in any event exceed the contract price for the product claimed to be
- 27 defective or unsuitable.
- 28 It is understood that any engineering or technical assistance furnished by Seller to Buyer
- 29 concerning the design and specifications of products sold hereunder is in the nature of
- 30 advice only, that the final judgment concerning design and specifications is Buyer's and
- 31 that in furnishing such engineering and technical assistance, Seller assumes no responsibil-
- 32 ity whatever with respect to the design or specifications of such products.
- 33 In addition to the prices set forth on the face hereof, Buyer shall pay any charges imposed
- 34 by Seller at the time of shipment based upon (a) unanticipated costs incurred by Seller
- 35 including, without limitation, costs of extra packing for export, special engineering or ser-
- 36 vicing, manufacturing tool charges and overtime and additional work authorized by Buyer
- 37 and (b) Buyer's proportionate share of unanticipated increases in manufacturing costs,
- 38 including, without limitation, increases in costs of material, labor and plating.
- 39 Any order received from a point within the United States, excluding Alaska and Hawaii,
- 40 shall have a minimum price of \$300.00 and any order received from a point outside the
- 41 United States shall have a minimum price of \$300.00.
- 42 It is understood that there may be a variance of as much as 5% between the quantity of
- 43 any product ordered and the quantity thereof shipped, and that Seller's shipment of a
- 44 quantity varying not more than 5% from the quantity ordered shall constitute full perfor-
- 45 mance by Seller hereunder. Notwithstanding the quantity shown on Buyer's order and on
- 46 the face hereof, Seller shall invoice Buyer, and Buyer shall pay, for the actual quantity
- 47 shipped so long as any such variance does not exceed 5%.
- 48 Buyer's cancellation or modification of any order or contract will not be accepted by Seller
- 49 except upon Buyer's payment to Seller of charges based upon costs incurred by Seller as
- 50 a result of such cancellation or modification. All modifications to terms, conditions, and
- 51 addendums will be explicitly documented on the face of this document. **Delivery sched-**
- 52 **ule changes will not be accepted within 60 days of promised delivery**
- 53 **on standard products. Orders cancelled within 60 days of scheduled**
- 54 **ship date will be subjected to cancellation charges of up to 100%.**
- 55 Delivery schedule changes for special products or special priced items will not be accepted
- 56 within 90 days of promised delivery. Orders cancelled for special products and special
- 57 priced items within 90 days of scheduled ship date will be subjected to charges represen-
- 58 tative of the cost incurred to ProtTek Devices.
- 59 Buyer may not return any product for exchange or credit without the written consent of
- 60 Seller's office at the point from which such product originally was shipped, and any prod-
- 61 uct so returned shall be subject to a restocking charge of not less than 2.5% of the invoice
- 62 price for such product. All returns must be accompanied by a written authorization or
- 63 authorization number supplied by ProtTek Devices.
- 64 Seller shall, at its own expense, defend any suits instituted against Buyer, based on any
- 65 claim that products furnished hereunder infringe any Letters Patent of the United States
- 66 and Seller shall pay any damages assessed against Buyer in any such suit, provided that
- 67 Buyer, upon service of process upon it, gives to Seller notice in writing of the institution of
- 68 such suit, and permits Seller, through counsel chosen by Seller to defend the same, and
- 69 gives Seller all information in Buyer's possession and reasonable assistance and authority
- 70 to enable Seller so to do. Seller shall have no liability, or obligation to Buyer for Patent
- 71 infringement resulting from compliance by Seller with written instructions or specifica-
- 72 tions of Buyer concerning the structure, material, or method of making products furnished
- 73 hereunder.
- 74 The contract resulting from the acceptance by Seller of Buyer's order or orders referred to
- 75 on the face hereof shall be based solely on the terms and conditions set forth in Seller's
- 76 written Quotation, if any, and on the face and reverse sides hereof. Such terms and
- 77 conditions shall not be amended or modified in any way by any additional, different or
- 78 contrary terms and conditions, contained in Buyer's order or in any other documents or
- 79 instrument submitted by or on behalf of Buyer. The contract so made between Buyer and
- 80 Seller shall be governed by and subject to the laws of the State of Arizona. ProtTek
- 81 Devices acceptance of Buyer's purchase order is expressly conditioned on Buyer's assent
- 82 to all terms and conditions stated hereon.
- 83 All notices hereunder shall be in writing and shall be given by forwarding the notice to the
- 84 party being notified at the address shown on the face hereof or at such other address as
- 85 may be designated in writing.
- 86 This Acknowledgment shall not be binding upon Seller unless signed on its behalf, and may
- 87 not be amended or modified in any way except by written instrument signed by authorized
- 88 personnel employed by Seller.
- 89 All Shipments F.O.B. Shipping Point. Delivery by Seller to Carrier constitutes delivery, as
- 90 well as transfer of title and possession to Buyer. Claims for loss or damage should be
- 91 promptly presented to Carrier.