CITY CLERK
ORIGINAL

C-8442
05/08/2013

smiths

DATE: 11/27/2012
QUOTATION NO.: O6UJ9A0005MJ
PAGE NO.: Page 1 of 6
TERMS: Net 30
VALID UNTIL: 2/25/2013
DELIVERY: See Terms & Conditions Summary Page
WARRANTY: One year parts and labor
DELIVERY TERMS: EX Works Danbury, CT
Federal ID#: 22-355-2823

Smiths Detection

Quotation for:

Glendale Fire Department
6210 W. Myrtle Avenue
Glendale, AZ 85301

Item	Qty	Part No.	Description	Base Price	Net Price
1	1	23292	**GasID 1 Year Partnership Program** - Free software updates - All parts & labor to repair system - Free loaner (delivered by overnight carrier) - Refresher course for 1 person per yr at a 1 day regional training course Limited to the length of Partnership Program -24/7 ReachBack access to Ph D. Chemists, Engineers, and Application Scientists for spectral interpretation assistance and/or technical support This is an extension of the standard one year warranty included with the system *Laptop system has a maximum of three years warranty per the manufacturer retired # 023-4022	$ 5,500.00	**$ 4,750.00**

TOTAL: **$ 4,750.00**

US TERMS AND CONDITIONS OF SALE

smiths detection
bringing technology to life

1 DEFINITIONS

(a) "Company" means **Smiths Detection Inc** , 2202 Lakeside Boulevard, Edgewood, MD 21040, USA
(b) "Equipment" means all components, spare parts, goods, equipment, or materials of any kind, which are supplied by Smiths under this Order
(c) "liability whatsoever" shall include, without prejudice to the generality of the expression, liability in tort and in contract, including liability for consequential loss (including loss of revenue or profit) or damage of any kind howsoever caused or arising
(d) "ICC Incoterms" means the International Chamber of Commerce's Incoterms as published from time to time and "Ex Works" and "FCA" shall have the meanings given them by ICC Incoterms from time to time save where such meanings are inconsistent with the terms hereof
(e) "Losses" means losses, claims, causes of action, suits, damages, liabilities, expenses (including, without limitation, fees and disbursements of legal counsel and expenses of litigation) or other obligations
(f) "Operator" means the operator or user of Equipment
(g) "Order" shall mean the agreement between the Company and the Purchaser (individually "Party" and collectively "the Parties") for the sale and purchase of the Equipment/Services, referencing the Terms and Conditions of Sale herein and any other contemporaneous writing, signed by both Parties
(h) "Purchaser" means the company, firm or individual who has bought, or agreed to buy, the Equipment and/or Services
(i) "Purchaser Delays" means any delay by Purchaser in performing any contractual obligations or any other circumstances for which Purchaser is responsible, including, without limitation, delays to attend testing (if required), take delivery, arrange shipment or import licences, or be available for installation and/or training
(j) "Quotation" means the quotation addressed to the Purchaser by the Company
(k) "Services" means all services, including maintenance and installation services, and operator training where applicable, provided under the Order

2 GENERAL

(a) The Quotation does not constitute an offer to supply any Equipment or Services and no contract exists unless and until there has been an acceptance by the Company in writing of the Order
(b) The acceptance of the Order whether or not based on a Quotation from the Company shall, unless otherwise specifically agreed by the Company in writing, be deemed to be subject to the terms and conditions herein contained which shall apply to the exclusion of any other provisions contained in any other document issued by the Purchaser at any time before or after this contract and, in particular, but without prejudice to the generality of the foregoing, contained in any order by the Purchaser
(c) Unless otherwise stated in writing all descriptions, specifications, drawings and particulars of weights and dimensions submitted by the Company or otherwise contained in the Company's handbooks, manuals, catalogues, brochures, price lists and other published matter are approximate only and none of these form part of any contract or gives rise to any independent or collateral liability upon the part of the Company being intended merely to present a general idea of the Equipment as described therein
(d) The performance figures in respect of the Equipment included in the Company's specifications, product brochures and other published matter are indicative only and based on results obtained by the Company representative testing The Company accordingly represents only that the Equipment met or demonstrated those performance standards or characteristics which are specifically attributed thereto in such specifications made available by the Company to the Purchaser and the Company gives no warranty that the Equipment will be suitable for any particular use to which the Purchaser may put them or how they will perform in such use or application
(e) The Purchaser shall ensure that any of its employees, agents or representatives or other person to whom the Purchaser shall provide the Equipment shall receive a copy of any operator manual in respect of the Equipment which is available from the Company

3 PRICE

(a) The price of the Equipment is current as of the date of the Quotation and valid for a period of 90 days thereafter, unless stated to the contrary by the Company in writing
(b) The Equipment shall be those specified in the Order as confirmed by the Company's acceptance in writing and the Company reserves the right to increase the price if the Purchaser requests an alteration to the Order or requests any modification to the Equipment
(c) Unless otherwise agreed in writing the price for the Equipment in respect of (i) contracts for delivery within the United States is Ex Works Company's Designated Facility (Incoterms 2010) including the cost of basic packaging but excluding freight, insurance, delivery charges, unloading, VAT and all applicable taxes and duties the cost of which shall be determined as at the date of the invoice and shall be payable by the Purchaser, and (ii) contracts for delivery outside the United States is FCA Company's Designated Facility (Incoterms 2010) and includes the cost of basic packaging
(d) The cost of any special packaging shall be determined at the date of invoice and shall be payable by the Purchaser
(e) The Purchaser shall not be entitled to make any deduction from the price of the Equipment in respect of any set-off or counter-claim unless both the validity and the amount thereof have been expressly admitted by the Company in writing

4 PAYMENT

(a) The Purchaser shall, except where other payment arrangements are specifically agreed in writing, make full payment in US Dollars for the Equipment not later than 30 days after the date of the invoice relating thereto or, if earlier, on the day which a receiver of the Purchaser's undertaking is appointed or upon which any act is done or event occurs which is related to the insolvency of the Purchaser If payment for the Equipment is not made when due the Company may charge interest thereon at the rate of one and a half per cent (1 5%) per month or the maximum rate allowable by law Time of payment shall be of the essence
(b) Any failure to pay the price or any part thereof and other moneys payable by the Purchaser hereunder when due will also entitle the Company to refuse to make delivery of any further consignment of Equipment under this contract or goods under any other contract with the Purchaser and without incurring any liability whatsoever to the Purchaser for any delay
(c) The Company shall retain a first, perfected security interest in the Equipment until the Purchaser has made full payment for the Equipment Until the Purchaser has made full payment for the Equipment, the Purchaser shall keep the Equipment free from any lien, charge, or similar encumbrance and shall not resell the Equipment Until the Purchaser has made full payment for the Equipment, the Company shall have the right to retake possession of the Equipment and for that purpose, with or without notice to the Purchaser, to enter any premises occupied by the Purchaser in which the Equipment may be Such retaking of possession shall not relieve the Purchaser from its obligation to purchase the Equipment by paying the full price thereof and shall not prejudice any rights of the Company including any right it may have to accept a repudiation by the Purchaser of the contract relating to the Equipment
(d) In addition to the foregoing and any additional lien to which the Company may otherwise be entitled, the Company shall, in the event of the Purchaser being insolvent or failing to pay the purchase price due under any other contract with the Company, be entitled to a general lien on all goods of the Purchaser in the Company's possession for the unpaid price of the Equipment sold and delivered to the Purchaser by the Company under this or any other contract In the case of repairs or overhauls performed pursuant to this Order, the Purchaser hereby grants to the Company a perfected security interest in all Equipment retained in possession of Smiths upon which any repair or overhaul services have been performed by the Company To the extent that the Company maintains possession of Equipment under repair, the Purchaser agrees that the Company is a secured creditor of the Purchaser and has all the rights of a secured creditor Any such liens or security interests granted herein may not be subordinated by the Purchaser
(e) No defect in the Equipment or Services shall operate to interfere with the terms of payment
(f) The Company reserves the right to change the terms of payment whenever it reasonably appears that Purchaser's financial condition requires such changes, and may demand assurance of the Purchaser's ability to pay whenever it reasonably appears that such ability is in doubt Such demand shall be in writing and the Company may, upon making such demand, stop production and/or suspend shipments hereunder without any liability whatsoever to the Purchaser

5 RISK & INSURANCE

(a) The Equipment shall be at the Purchaser's risk as provided under ICC Incoterms Any Purchaser Delays shall result in immediate transfer of the risk of loss to the Purchaser and Purchaser shall be responsible for the procurement of insurance, if so desired, on the Equipment
(b) The Company shall have no liability for damage of the Equipment unless notice of a claim is received by the Company within 3 days of the Equipment being received by the Purchaser

6 DELIVERY

(a) Unless otherwise agreed in writing (i) all shipments of Equipment made by Smiths shall be Ex-Works Company's Designated Facility (INCOTERMS 2010), (ii) notwithstanding the foregoing, all shipments exported outside of the United States shall be FCA Company's Designated Facility (INCOTERMS 2010)
(b) Unless otherwise stated in writing any time or date for the delivery shall run from the date on which acceptance of the Order is communicated to the Purchaser
(c) Delivery and the Purchaser's acceptance of the Equipment shall be deemed to have taken place at the earliest point in time at which risk passes to the Purchaser under the ICC Incoterms Signature of any delivery note by any agent, employee or representative of the Purchaser or by any independent carrier shall be conclusive proof of the delivery and the Purchaser's acceptance of the Equipment Notwithstanding such delivery, the Company shall have a general and particular lien over the Equipment for all claims by the Company against the Purchaser and all monies owing by the Purchaser to the Company howsoever arising
(d) Without prejudice to any rights of the Company hereunder, if the Purchaser shall fail to give on or before the agreed date of delivery all instructions reasonably required by the Company and all necessary documents, licences, consents and authorities (which the Purchaser is obliged under these terms and conditions or by law to obtain) for forwarding the Equipment or if there is any other Purchaser Delay, the Purchaser shall pay to the Company all storage and insurance costs and any other out of pocket expenses incurred arising from such delay

(e) The Purchaser shall be obliged to take delivery of the Equipment and/or Services when they are delivered or tendered for delivery in accordance with the Order Where the Purchaser refuses or is unable (for any reason) to accept delivery of the Equipment and/or Services or if there is any other Purchaser Delay, the Company shall have the right (without prejudice to its *other rights) to invoice the Purchaser in respect thereof (payment to be* made within 30 days of the invoice date) and the Equipment and/or Services shall be deemed Delivered The Company shall be entitled to invoice the Purchaser for the reasonable costs of re-delivery, storage and all other handling costs arising directly or indirectly therefrom and the Purchaser shall make payment to the Company within 30 days of the invoice date

(f) Purchaser Delays shall be considered excusable delays for the Company and result in a corresponding automatic extension of any agreed upon time for the performance of the Company's obligations under this Order The Company shall not be liable to the Purchaser under any circumstances *whatsoever for any penalty, damage or loss resulting directly or indirectly* from any Purchaser Delays

(g) Unless otherwise stated in writing the Company shall be entitled to make partial deliveries by instalments and (where the Company has agreed to be responsible for delivery of the Equipment to the Customer) to determine the route and manner of delivery of the Equipment and shall be deemed to have the Purchaser's authority to make such contract with any carrier as the Company may deem reasonable If the route involves sea transit the Company shall not be obliged to give the Purchaser any notice

(h) Where delivery of the Equipment is made in instalments, each instalment shall be construed as constituting a separate agreement to which all the *provisions of these conditions shall (with any necessary alterations) apply*

(i) Time shall not be of the essence for delivery

(j) In the event of any delay in delivery or installation whether attributable to cause outside the Company's control or not the Company shall be under no liability whatsoever to the Purchaser

7 WARRANTY

(a) The Company warrants that the Equipment supplied by it against defective materials and defective workmanship for a period of twelve months from the date of delivery or deemed delivery (see condition 7 (f) above) provided *the Purchaser notifies the Company in writing of any alleged defect within* 30 days of its discovery Under this warranty the Company will, in its sole discretion, either at the Customer's premises or on the Purchaser returning the Equipment carriage paid to such place as the Company shall direct, make good any defect by repair or replacement within a reasonable period of time if, in the opinion of the Company, the defect constitutes a breach of this warranty Any parts so repaired or replaced free of charge under this warranty will be subject to a warranty on the same terms as this warranty for the remaining initial warranty period Electronic components and other parts or components not manufactured by the Company shall be subject only to such warranty (if any) as shall be given by the manufacturer or *supplier thereof to the Company*

(b) No claim will be met by the Company under this warranty arising out of fair wear and tear or if the Equipment have been incorrectly fitted, misused, kept in storage or immobilised for one year or more, subjected to neglect or abnormal conditions or involved in any accident or any attempt to repair, replacement or modification has been made without the sanction of the Company or if they have been in any way dealt with contrary to any instructions issued by the Company

(c) Equipment and parts that are consumed in normal operation are not covered by this warranty

(d) The Company warrants that it shall use reasonable skill and care in the *performance of the Services delivered under the Order The Company* does not represent or warrant that all equipment problems will be corrected to the full satisfaction of Purchaser The express warranty set forth in the first sentence of this provision shall be the only warranty given by the Company with respect to the Services provided The Purchaser's exclusive remedy for breach of the express warranty set forth in this provision 8(e) shall be re-performance of the deficient Services within a reasonable period of time Notice of a breach of this warranty must (i) specify in reasonable detail the nature of the claim, and (ii) be received within thirty (30) days from the last day of performance of the Services

(e) For goods not manufactured by the Company, the Company's only *responsibility is to assign to the Purchaser any manufacturer's warranty* where permissible

(f) If the Purchaser or the Operator discovers a defect within the applicable warranty period, it must be reported to the Company's service department immediately upon discovery

(g) Within a reasonable time after proper notification, the Company shall, during its normal business hours, Monday through Friday, correct any defect covered by this warranty with either new or used replacement parts, without charge The original duration of this Warranty shall remain applicable to those parts not repaired or replaced Any part repaired or replaced is warranted to conform to the Company's specifications and to be *free from defects in materials or workmanship appearing within a period* after repair or replacement equivalent to the warranty period originally applicable to the Equipment of which it is a part, subject to the other terms of this Warranty The above remedies are the exclusive remedies of the Purchaser and Operator, and the sole responsibility of the Company, for breach of this Warranty

(h) The Company's warranty ceases to be effective if the Purchaser fails to operate and use the Equipment sold hereunder in a safe and reasonable manner in accordance with the Company's written instructions

(i) Neither the Purchaser nor the Operator shall be entitled to any remedy under this Warranty with respect to

(i) Equipment that has been subjected to any alteration, disassembly, tampering, modification, or repair without prior authorization by the Company,

(ii) Equipment subjected to experimental running or any type of operation or use other than that for which the Equipment/Services *is designed*,

(iii) Equipment from which the Company's and/or vendor's trademark or serial number has been altered, removed, or obliterated without Company' written permission, excluding any alteration, removal, or obliteration directly caused by accident or mishap,

(iv) Equipment that has been serviced by any party other than the Company, its authorized service representatives, or a party trained and certified by the Company to provide such service,

(v) Equipment that has been in storage or immobilized for one year or more after delivery

8. LIMITATION OF LIABILITY

(a) The Purchaser is relying on its own skill and judgement in relation to the Equipment supplied under this contract and the Company accepts no liability whatsoever for any knowledge it or its employees, agents or representatives may possess as to the purpose for which the Equipment are supplied

(b) The Purchaser acknowledges and agrees that

(i) The Equipment is intended to be used as security screening equipment, in order to assist in the detection of illegal and/or hazardous materials,

(ii) *The degree of success with which the Equipment will fulfil their* intended use is dependent on numerous factors, including without limitation the sophistication of efforts to conceal illegal and/or hazardous materials, the chemical identity and quantity of such materials, the skill, diligence and qualifications of the Operator (where applicable) and environmental conditions, and

(iii) No security screening equipment is capable of detecting every threat, and neither the Purchaser nor the Operator has any expectation that the Equipment are capable of detecting, or that they will detect, all illegal and/or hazardous materials (this being the case whether the Equipment are operated with or without *Operator supervision, and regardless of the degree of diligence* with which services of the Company, if any, are or have been performed)

(c) The Company makes no guaranty or warranty as to the results that will be achieved through the use of the Equipment and it is agreed that the sole responsibility for such results shall be borne by Purchaser

(d) **The remedies provided in Clause 8 above shall be the Purchaser's sole remedy under the Warranty and all further remedies are hereby expressly excluded**

(e) **Neither the Company nor any of its affiliates shall be under any liability whatsoever to the Purchaser for indirect or consequential *loss (including, but without limitation, loss of profit, loss of* revenue, loss of goodwill, special, consequential, incidental, exemplary or other damages, including damages resulting from substitute procurement, loss of use, loss of data, loss of savings, loss of business, failure or delay in performance, even if the Company or its affiliates have been advised of the possibility of any such damages and whether or not arising out of any liability of the Purchaser to any other person) and all conditions, warranties or other terms whether express or implied, statutory or otherwise, inconsistent with the provisions of this Section, are hereby expressly excluded**

(f) ***The aggregate liability of the Company and its affiliates taken* together in respect of the direct consequences and, in the event that the Company is not entitled (for any reason) to rely on the provisions of paragraph (d) above, the indirect consequences (including but without limitation loss of profit, revenue or goodwill and whether or not arising out of any liability of the Purchaser to any other person) resulting from any breach of contract, breach of a duty of care, statutory duty, product liability or otherwise howsoever suffered shall be limited to the lesser of (i) the amount of the Order to which the Equipment relate or (ii) US$500,000, and all conditions, warranties or other terms whether express or *implied, statutory or otherwise, inconsistent with provisions of* this Section are hereby expressly excluded.**

(g) All, if any, statements, recommendations and advice given by the Company or the Company's servants or agents to the Purchaser or its servants or agents as to any matter relating to the Equipment are given without responsibility and shall not give rise to any liability whatsoever on the part of the Company and the Purchaser hereby represents and warrants to the Company that no representation has been made to it by or on behalf of the Company that has in any way induced the Purchaser to enter into the contract with the Company

(h) Should these Conditions apply to a consumer transaction the *Purchaser's statutory rights shall not be affected by this Section 9*

9 INDEMNITY

To the fullest extent permitted by applicable law, the Purchaser shall defend, indemnify, and hold harmless the Company and its affiliates from and against any and all Losses and threatened Losses to the extent they result from or in connection with the purchase, use and/or operation of Equipment by Purchaser or Operator, including but not limited to any of the following (i) the death or bodily injury of any agent, employee, customer, business invitee, or business visitor or other person, and the *damage, loss, or destruction of any real or tangible personal property, (ii)*

any action taken by or on behalf of Purchaser and/or Operator in the performance of this Agreement that causes the Company or its affiliates to be obligated to indemnify, defend, and/or hold harmless any third party, (iii) any claim, demand, charge, action, cause of action, or other proceeding resulting from an act or omission of the Purchaser, its employees, agents, or subcontractors acting in its or their capacity as an employer or potential employer with respect to the claimant, and (iv) any claim by the Purchaser or the Operator, whether based on warranty or other contract breach, negligence or other tort, for matters disclaimed in subsection 9(d) above The Purchaser shall fully indemnify and completely hold harmless the Company and its affiliates as provided above, whether or not negligence or other fault of the Company or any of its affiliates contributed to, or is claimed or alleged to have contributed to, the claim, action, damage, loss, cost, liability or expense Nothing in subsection 9(g) or this Section 10 shall exclude or limit the liability of the Company or its affiliates, or require the Purchaser to defend, indemnify or hold harmless the Company or its affiliates, in circumstances where the Losses claimed are alleged to have resulted from (i) wilful misconduct or gross negligence of the Company and/or its affiliates, (ii) any fraud or fraudulent conduct on the part of the Supplier the Company and/or its affiliates, or (iii) any other liability that cannot be excluded by law, and where (in each case) such fault on the part of the Company and/or its affiliates or liability is adjudicated to be the cause of the Losses

10. COMPLIANCE WITH APPLICABLE LAW

The Purchaser shall comply with all applicable laws, treaties, regulations and codes of practice including, without limitation, the laws of the United States, and shall be solely liable for obtaining and maintaining any licenses, permits, or approvals that may be required for the purchase and operation of the Equipment

11 EXPORT AND IMPORT CONTROLS

(a) In the case of export contracts, all import duties, charges and assessments shall be paid by the Purchaser and the obtaining of any necessary import licences in respect of the Equipment shall be the sole responsibility of the Purchaser and the Company shall be under no liability whatsoever to the Purchaser in respect of goods exported without the necessary import licences The number and expiry date of any import licence shall be furnished to the Company with the shipping instructions at least one month prior to the delivery date If the import licence expires before the Equipment has been made available the Purchaser shall be responsible for its renewal The Company shall not be liable for any expense or loss caused by a Purchaser Delay in obtaining such licence or the renewal thereof

(b) When the export of the goods from the United States is subject to control, the contract will be conditional on the grant of an export licence Applications for this licence will be made by the Company only when the Company is responsible for shipment In all other cases the Company may assist the Purchaser in the procurement of such licence, but without being under any legal liability to do so

(c) The sale, resale or other disposition of the Equipment and any related technology or documentation are subject to the export control laws, regulations and orders of the United States and may be subject to the export and/or import control laws and regulations of other countries The Purchaser agrees to comply with such laws, regulations and orders and shall not permit its employees, distributors, customers, brokers, freight forwarders, and/or agents to export or re-export any of the Equipment or any technology to any foreign person without complying with the applicable laws To the fullest extent permitted by applicable law, the Purchaser shall defend, indemnify, and hold harmless the Company and its affiliates from and against any and all Losses and threatened Losses to the extent they result from a breach of this Section 11

12 INTELLECTUAL PROPERTY RIGHTS

In the event of any claim being made or action being brought or threatened in respect of infringement of patents, copyright, trade marks, trade names, registered designs or any other intellectual property rights in respect of the Equipment the Purchaser will make no admission in respect thereof and will notify the Company thereof forthwith and the Company shall be entitled to conduct all negotiations and take all necessary proceedings to dispute the same in its own name and in the name of the Purchaser and the conduct of all proceedings and negotiations shall be completely at the discretion of the Company In such event the Purchaser will execute all such documents and do all such things and render all such assistance to the Company as the Company shall require and the Purchaser shall indemnify the Company against all costs, expenses, loss or damage incurred by the Company in respect of any claim being made or action brought or threatened as a result of work done in relation to the Equipment by the Company in accordance with the Purchaser's specification or by the use to which the Equipment are put by the Purchaser

13 SUB-CONTRACTS

The Company reserves the right to sub-contract the performance of the contract or any part thereof

14 ASSIGNMENT

The Purchaser shall not assign or transfer or purport to assign or transfer any contract to which these Conditions apply or the benefit thereof to any other person whatsoever without the consent of the Company

15 SALES BY THE PURCHASER

The Purchaser undertakes to the Company that in respect of any sales of the Equipment the Purchaser shall

(a) maintain a record of all such sales, including dates, prices, the names and addresses of the Purchaser's customers and product references and numbers and provide such details to the Company within 30 days of any such sale,

(b) submit to the Company all complaints relating to the Equipment together with all available evidence and other information relating thereto and forward to the Company for examination if necessary the Equipment in respect of which complaints are made together with full identification of such Equipment including product references and numbers In the event of any dispute arising between the Purchaser and any third party in relation to the quality or characteristics of any of the Equipment sold by the Purchaser, the Purchaser shall inform the Company immediately of such dispute The Purchaser shall not admit liability or do anything which might be construed as an admission of liability nor take any proceedings in respect of, or compromise, such dispute,

(c) provide all customers with the specification and the operator manual and (where the customer requests) service manual relating to the relevant Equipment and make it clear to customers that training and service support are available directly from the Company and pass on to the Company any resultant requests,

(d) give effect to the Company's current Conditions of Sale when selling the Equipment and shall not, and shall procure that none of its employees, agents or representatives shall make any representation or statement in relation to the goods which is not contained in the Company's current Conditions of Sale,

(e) comply with all applicable export control laws, regulations and orders, and

(f) indemnify the Company against all costs, expenses, loss or damage incurred by the Company as a result of any breach by the Purchaser or any of its employees, agents or representatives of any of the provisions of this Section 15

16 CONFIDENTIALITY

(a) The Parties agree that in the course of performance of the contract to which these Conditions apply, it may be necessary and desirable for them to exchange confidential information For example, all updates, repairs, replacements, fixes, modifications, and other changes to the Equipment shall be considered the Company's proprietary information To accomplish this confidentiality, the parties agree as follows Purchaser shall not disclose confidential information of the Company to any person outside its employ, except when authorized by the Company Purchaser shall use the same level of care in preserving the confidential nature of the confidential information as it uses to protect its own confidential information but not less than reasonable care Purchaser shall use the Equipment only for the purpose contemplated by the parties at the time of sale, and for no other purpose Purchaser shall not (i) reverse engineer, disassemble (except to the extent applicable laws specifically prohibit such restriction), or decompile the Equipment or any portion thereof, (ii) engage in activities to develop improvements to the Equipment, (iii) modify the Equipment or integrate them with any other products, systems, devices or other items other than as contemplated at the time of sale, or (iv) allow or assist any third party to perform any of the foregoing

(b) **PROPRIETARY INFORMATION STATEMENT**· The Quotation contains information confidential and proprietary to the Company No part of this information may be reproduced or transmitted in any form without the prior written permission of the Company The Quotation supersedes all previous quotations and is valid for 90 days from date of issue, unless otherwise stated

17 RETURN OF GOODS

(a) No return of Equipment for purposes of the Warranty or where return is otherwise expressly permitted under the Order shall be accepted by Company without a Return Material Authorization ("RMA") number, which may be issued by the Company in its sole discretion, and receipt of a duly completed Purchaser Declaration in the Company's designated format in respect of exposure of the Equipment to hazards which is available at http //www smithsdetection com/US terms conditions php All Equipment for return shall be returned freight prepaid in the manner specified in the RMA If returned Equipment are claimed to be defective, a complete description of the nature of the defect must be included with the returned Equipment Equipment not eligible for return shall be returned to Purchaser, freight collect

(b) The Purchaser agrees to defend, indemnify and hold the Company, its affiliates and its and their respective officers, partners, directors, employees, agents, successors, and assigns harmless from all , Losses and threatened Losses arising out of or in connection with the exposure of the product to hazardous materials, regardless of whether or not (i) the exposure to hazardous materials was caused by or within the control of the Purchaser, (ii) the Company was aware of such exposure, and (iii) any negligence or other fault of the Company contributed to, or is alleged to have contributed to, the Loss, except and only to the extent such Loss was adjudicated to be caused by the wilful misconduct or gross negligence of the Company

(c) A 20% restocking fee shall apply to all returned items, in addition to any shipping costs incurred and Company technician expenses if applicable

18. GOVERNING LAW

The Order and these Terms and Conditions of Sale shall be governed by and construed in accordance with the laws of New York State without reference to its conflicts or choice of laws provisions Any legal action shall be brought in the exclusive venue of the federal and state courts of New York State in Manhattan, New York, NY *The Company and the Purchaser* hereby irrevocably waive the right to a jury trial to the extent permissible by law **THIS ORDER SHALL NOT BE GOVERNED BY THE 1980 U N CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS** Notwithstanding the foregoing, the federal laws of the United States of America shall be the governing laws, to the extent appropriate, with respect to issues involving patent, copyright, or trademark

19 CHANGES AND TERMINATION

(a) Company shall have the right, in it sole discretion, to terminate the Order if the Purchaser
  (a) is unable to pay its debts generally as and when they become due,
  (ii) is the subject of a legal process declaring it insolvent,
  (iii) ceases or threatens to cease carrying on its business,
  (iv) commits any breach of the Order which is (a) incapable of remedy (as reasonably determined by the Company) , or (b) not remedied within 14 days of the date of the breach

(b) Purchaser may make a written request for amendment, modification, or termination If a request for amendment or modification is accepted by the Company, and any changes cause an increase or decrease in the cost of, or the time required for, the performance of any work under the Order an *equitable adjustment shall be made in the price or delivery schedule, or* both, and the Order shall be modified in writing accordingly Wherever the cost of property made obsolete as a result of the change is included in the price adjustment, Purchaser shall have the right to prescribe the manner of disposition of such property If request for termination is accepted by the Company, equitable provision shall be made to The Company for a recoupment of all costs incurred under the Order and for reasonable profit based on time and costs expended The Order shall continue in effect until such time as payment is received A written request as specified herein shall give The Company adequate reason to demand written assurance of Purchaser's ability and intent to carry out the Order

20 FORCE MAJEURE

The Company shall not be liable to the Purchaser for any loss or damage *arising due to delay or non-performance of its obligations under this* Agreement arising from any cause beyond its reasonable control including, without limitation, any of the following act of God, exceptional adverse weather conditions, flood, lightening or fire (except if the cause of fire originates from the Equipment), strike or lockout, terrorist and/or insurgent activity, armed conflict, large scale organized criminal activity, the act or omission of Government or administrative or other competent authority, war, military operations or riot The Company shall be permitted to suspend its obligations under the Order for the duration of any force majeure event

21. INSTALLATION OF THE EQUIPMENT

(a) Installation and training are not included unless otherwise expressly stated in the Order Where the Company has agreed to install the Equipment, the Purchaser shall at its own cost prepare the site on which the Equipment are *to be installed in accordance with the specifications furnished by the* Company for this purpose and, in accordance with such specifications, provide such equipment (including without limitation, any equipment necessary to unload the Equipment) and carry out such works to the site as may be necessary to enable the Company to install the Equipment and if it shall fail so to prepare the site and provide such equipment and carry out such works before the agreed delivery date the Purchaser shall indemnify the Company for all costs and charges incurred by the Company (including storage and transportation costs) as a result of such failure

(b) When the Equipment shall have been installed at the site, tested and shown to be operating to the satisfaction of the Company, the Purchaser shall be deemed to have accepted the Equipment unless the Company has been notified to the contrary in writing by the Purchaser within seven days of completion of such testing (the "Notice") The Purchaser shall not give and shall be deemed not to have given the Notice unless the Purchaser has found a substantial defect in the Equipment If the Company is so notified, the Company shall use its reasonable endeavours to remedy any such defect within a reasonable time and the Purchaser shall be deemed to have accepted the Equipment within seven days of such defect being remedied

(d) Purchaser Delays shall be considered excusable delays for the Company and result in a corresponding automatic extension of any agreed upon time *for the performance of the Company's obligations under this Order The* Company shall not be liable to the Purchaser under any circumstances whatsoever for any penalty, damage or loss resulting directly or indirectly from any Purchaser Delays

(e) The cost of installation and training purchased is included within the Company's proposal, provided the installation is scheduled within 90 days from the date the unit shipped This includes one visit to the Purchaser's facility where the installation and training will be conducted during normal business hours Monday through Friday Installation and training is only included for equipment delivered and installed within the 48 contiguous States

(f) **This Installation and Training clause 22(f) only applies to X-Ray equipment Installation is not included for TRACE products unless otherwise denoted on the Quotation.** The Purchaser must contact the Company's Service Department to confirm receipt of the Equipment to schedule a visit During this visit, the Company technician will install the X-ray unit (160 Kv or lower), which includes a Radiation Survey and calibration of the equipment as well as train the Purchaser's personnel on the start-up and fail-safe features, basic usage and software features of the equipment purchased The technician will not engage in any form *of image interpretation training*

22 SOFTWARE

To the extent that the Equipment contain or are software, Company hereby grants to Purchaser a non-exclusive, non-transferable, personal license to use the software and related documentation solely with the Equipment Purchaser's use of the Equipment conclusively evidences its acceptance of this license and these Terms and Conditions, including this Section 22 Title to the software shall at all times remain with Company Purchaser agrees that the software, all enhancements, related documentation, and derivative works are, and will remain, the sole property of the Company and includes valuable trade secrets Purchaser agrees to treat the software and related documentation as confidential and to not copy, reproduce, sub-license, or otherwise disclose the software and related documentation to third parties Purchaser agrees to not disassemble, decompile, reverse engineer, create derivative works from, attempt to derive the source code or otherwise translate, customize, localize, modify, add to, or in any way alter, rent, or loan the software or related documentation

23. CEIA METAL DETECTORS

If the Equipment sold under these Conditions includes metal detectors manufactured by CEIA the following additional provision applies To ensure proper operation of the unit, CEIA recommends that the unit be firmly anchored to the floor using screws or silicone If the unit is not firmly anchored to the floor, it may fall and pose a safety risk and/or its detection capability may be compromised If the Purchaser requests that the Company not install the unit in accordance with CEIA's recommendations, COMPANY SHALL HAVE NO LIABILITY FOR ANY CLAIMS, COSTS, LOSSES, LIABILITIES AND DAMAGES OF ANY SORT (WHETHER DIRECT, INDIRECT, SPECIAL, CONSEQUENTIAL, PUNITIVE OR OTHERWISE, AND WHETHER ARISING IN TORT, CONTRACT, WARRANTY, STRICT LIABILITY, RELIANCE OR UNDER ANY OTHER THEORY) RELATING TO THE LACK OF FIRM FIXATION OF THE CEIA UNIT TO THE FLOOR To the fullest extent permitted by applicable law, Purchaser shall indemnify and hold the Company harmless from and against any and all actual or threatened Losses resulting from the lack of firm fixation of the CEIA unit to the floor

24. X-RAY BODY SCANNER

(a) Purchaser is hereby notified that the exposure of human beings to x-ray *radiation may be harmful Purchaser acknowledges that the safe* operation of the Equipment is entirely the Purchaser's responsibility and that the Company shall have no liability relating to the use or operation of the Equipment by Purchaser or anybody acting on the Purchaser's behalf Purchaser undertakes to exercise such care and to adopt and follow such procedures in the use and operation of the Equipment as may be necessary to eliminate or minimize the hazards referred to in this section Without limiting the generality of the foregoing, Purchaser undertakes to use the Equipment in full compliance with Company' maintenance procedures and operator manuals, to comply with the requirements of all applicable environmental or occupational health and safety laws, radiation safety laws and industry standards relating to radiation safety for personnel security screening systems using x-rays, and to operate the Equipment within the radiation dose limits established by such laws and standards

(b) Purchaser is further notified that the use of x-ray Equipment on human beings for non-medical purposes may be prohibited in some states or require registration with governmental authorities Purchaser undertakes to comply with all such prohibitions and registration requirements

(c) Purchaser covenants that the use and operation of the Equipment by or on behalf of the Purchaser shall comply with all applicable privacy and data protection laws

(d) *To the fullest extent permitted by applicable law, Purchaser shall defend,* indemnify, and hold harmless Company and its affiliates and their respective officers, partners, directors, employees, agents, successors, and assigns from and against any and all actual or threatened Losses to the extent they arise from any non-compliance with the undertakings in paragraphs (a) to (c)

25 COMPLIANCE AND ETHICS

The Company is an Equal Opportunity Employer and is committed to conducting its business ethically and lawfully To that end Company, maintains a Code of Business Ethics and mechanisms for reporting unethical or unlawful conduct Company expects that the Purchaser also will conduct its business ethically and lawfully Company Code of Business Ethics is available at http //www smithsdetection com/eng/ethics php

26 Addendum – Company agrees to additional terms on immigration, prohibitions of work in Iran and Sudan, and conflicts per attached Addendum

Please Initial Here

CITY OF GLENDALE, an Arizona municipal corporation

Richard Bowers, Acting City Manager

ATTEST:

Pamela Hanna, City Clerk (SEAL)

APPROVED AS TO FORM:

Nicholas C. DiPiazza, Acting City Attorney

ADDENDUM

Smith's Detection

Smith's Detection (Agreement No.)

Smith's Detection "Contractor" further agrees as follows:

I. Immigration Law Compliance.

A Contractor, and on behalf any subcontractor, warrants, to the extent applicable under A.R S. § 41-4401, compliance with all federal immigration laws and regulations that relate to their employees as well as compliance with A.R.S. § 23-214(A) which requires registration and participation with the E-Verify Program.

B. Any breach of warranty under subsection (A) above is considered a material breach of this Agreement and is subject to penalties up to and including termination of this Agreement.

C. City of Glendale ("City") retains the legal right to inspect the papers of Contractor or subcontractor employee who performs work under this Agreement to ensure that Contractor or any subcontractor is compliant with the warranty under subsection (A) above

D. City may conduct random inspections, and upon request of the City, Contractor shall provide copies of papers and records demonstrating continued compliance with the warranty under subsection (A) above. Contractor agrees to keep papers and records available for inspection by the City during normal business hours and will cooperate with City in exercise of its statutory duties and not deny access to its business premises or applicable papers or records for the purposes of enforcement of this Section I.

E. Contractor agrees to incorporate into any subcontracts under this Agreement the same obligations imposed upon itself and expressly accrue those obligations directly to the benefit of the City Contractor also agrees to require any subcontractor to incorporate into each of its own subcontracts under this Agreement the same obligations above and expressly accrue those obligations to the benefit of the City.

F Contractor's warranty and obligations under this Section I to the City are continuing throughout the term of this Agreement or until such time as the City determines, in its sole discretion, that Arizona law has been modified in that compliance with this section is no longer a requirement

G. The "E-Verify Program" above means the employment verification program administered by the United States Department of Homeland Security, the Social Security Administration, or any successor program.

II. Prohibitions. Contractor certifies under A.R.S. §§ 35-391 *et seq.*, and 35-393 *et seq.*, that it does not have, and during the term of this Agreement will not have, "scrutinized" business operations, as defined in the preceding statutory sections, in the countries of Sudan or Iran

III. Conflicts. This Agreement is subject to cancellation for conflicts of interest under the provisions of A R.S. § 38-511