

## **TERMS AND CONDITIONS**

### **DEFINITIONS**

The words and phrases set off by quotation marks in this section of this Agreement shall have the meanings indicated.

"Agreement" means this Agreement for Purchase of Products & Providing Services, these terms and conditions, and all attachments thereto.

"Buyer" means the person or organization named as Buyer on the face of this Agreement.

"Code" means the Illinois Uniform Commercial Code, 810 ILCS 5/1 *et seq.*

"Premises" means the location where the Products will be installed or Services provided as indicated on the face of this Agreement.

"Products" means the items specifically identified by part number and/or serial number or otherwise of the face of this Agreement.

"Purchase Price" means the cost of the Products or Services as set forth on the face of this Agreement.

"Seller" means Getz Fire Equipment Co. d/b/a Getz Equipment Innovators.

"Services" means the activities to be performed by Seller under this Agreement.

Whenever a word or phrase which is used in this Agreement is defined in the Code, such word or phrase shall have the same meaning as defined in the Code unless the Code definition is consistent with the definitions herein.

**SECURITY INTEREST:** Buyer grants Seller a security interest in the Products to secure the payment by Buyer of all amounts due under this Agreement and all other amounts which may subsequently become due to Seller from Buyer. Seller may file a financing statement to perfect its security interest in the Products.

**WARRANTY AND WARRANTY PROCEDURE:** AS TO THE SALE OF PRODUCTS, THE WARRANTY GIVEN BY THE MANUFACTURER IS THE ONLY WARRANTY GIVEN ON THE PRODUCTS; SELLER MAKES NO WARRANTIES WITH RESPECT TO THE PRODUCTS. IF ANY OF THE PRODUCTS DO NOT CONFORM TO THE MANUFACTURER'S WARRANTY, BUYER SHALL FOLLOW THE WARRANTY PROCEDURE CONTAINED IN THE MANUFACTURER'S WARRANTY. IF THE MANUFACTURER'S WARRANTY MATERIALS HAVE NOT BEEN DELIVERED TO THE BUYER, BUYER MUST NOTIFY SELLER IN WRITING WITHIN FIFTEEN (15) DAYS OF THE DELIVERY OF THE PRODUCTS. IF THE MANUFACTURER'S WARRANTY APPLIES TO PARTS AND NOT LABOR, THE SELLER WILL PAY LABOR CHARGES FOR WARRANTY WORK PERFORMED DURING THE FIRST NINETY (90) DAYS OF THE MANUFACTURER'S WARRANTY PERIOD. Buyer's remedies for defects in material or workmanship of the Products are expressly limited to those remedies set forth above. Those remedies are exclusive and are in lieu of all other remedies provided by law, including, but not necessarily limited to, remedies commonly designated or known as actions of breach of contract, breach of warranty, negligence, and strict liability in tort. SELLER WARRANTS THAT ALL SERVICES WILL BE PROVIDED IN A GOOD AND WORKMANLIKE MANNER. ALL OF THE WARRANTIES UNDER THE "WARRANTY AND THE WARRANTY PROCEDURE" ABOVE SHALL BE VOID IF BUYER, OR ANY PERSON CLAIMING THROUGH BUYER OR EMPLOYED BY BUYER: (A) FAILS TO FOLLOW THE MANUFACTURER'S OR SELLER'S INSTRUCTIONS REGARDING MAINTENANCE OF THE PRODUCTS AS SET FORTH IN THIS AGREEMENT OR OTHERWISE; (B) FAILS TO EXERCISE REASONABLE CARE IN THE OPERATION OR USE OF THE PRODUCTS; AND/OR (C) ALTERS, MODIFIES OR IMPROPERLY REPAIRS THE PRODUCTS.

**WARRANTY EXCLUSION:** THE FOREGOING WARRANTIES ARE IN LIEU OF AND EXCLUDE ALL OTHER WARRANTIES NOT EXPRESSLY SET FORTH HEREIN WHETHER EXPRESS OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES RELATIVE TO PATENT INFRINGEMENT AND ANY IMPLIED WARRANTIES OF MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE.

**INTENT OF INSPECTION:** Any inspection or testing performed by Seller as Services is not intended to be a code review, or a complete system or code compliance evaluation.

**PAYMENT AND SELLER'S REMEDIES:** All amounts due from Buyer to Seller pursuant to this Agreement shall be paid according to this Agreement. Any amounts not paid when due shall bear interest at the lesser of the rate of one and a half percent (2%) per month (which is 24% per year) or the maximum allowable by law. All charges of whatsoever kind of nature assessed against Seller by any bank or other financial institution in connection with payments due from Buyer to Seller shall be paid to Seller by Buyer on demand as an addition to the Purchase Price. **In the event any third parties are employed to collect any outstanding monies owed by said business the undersigned agrees to pay reasonable collection costs, including attorney fees, whether or not litigation has commenced, and all costs of litigation incurred.**

In the event that Buyer fails to perform its obligations, Seller, at its option may cancel this Agreement and choose from the following options:

(1) recover from Buyer its damages, including its expenses, restocking fee of 20% of the Purchase Price, and the difference between the Purchase Price for the Products and the amount the Product is sold less any expenses; or

(2) dispose of the Products publicly or privately for Buyer's account and apply the net proceeds, after deducting expenses or disposition, against the Purchase Price and in case of any deficiency, the Buyer shall remain liable.

In the case that the Products have been accepted by the Buyer, or the Services have been provided, Seller may recover the Purchase Price and expenses. Seller's expenses in any case shall include litigation expenses, reasonable attorneys' fees, and liabilities in connection with, arising out of, or relating to this Agreement and any other costs of enforcing its rights.

Buyer hereby represents that it is solvent and Buyer signing of any delivery receipt furnished by Buyer to the delivering carrier shall constitute a further representation of solvency at the time of signing such receipt.

Seller shall have the right to withhold shipment to any portion of the Products or Services covered by this Agreement, or any other existing agreement between Seller and Buyer, in the event Buyer fails to make payment when due under any agreement between Buyer and Seller. Any such action on the part of Seller shall not release Buyer from its obligation to accept and pay for such remaining Products if and when shipped by Seller.

**RISK OF LOSS; SHIPMENT; DELIVERY DATES; PARTIAL SHIPMENTS:** Except as may be otherwise noted on the face hereof, the Products shall be delivered Free On Board ("f.o.b.") shipping point. Delivery of the Products to a carrier, Buyer, or Buyer's agent shall be deemed delivery to Buyer.

Thereupon, title to such Products and risk of loss or damage shall be with Buyer.

Seller shall not be liable for loss or damage due to delay in delivery resulting from any cause beyond Seller's reasonable control, including, but not limited to, compliance with any regulations, orders, or instructions of any Federal, State, Municipal or other government or any department or agency thereof, acts of God, acts or omissions of Buyer, acts or civil or military authority, fires, strikes, factory shutdowns, or alterations, embargoes, war, riot, delays in transportation, delays in manufacturer, or inability of Seller to obtain the Products from its supplier or the materials necessary to construct the Products or necessary labor from its usual sources. Any delay resulting from such cause shall constitute cause for extending the delivery date.

Seller shall have the right to make partial shipments. Each partial shipment shall be deemed a separate sale and payment shall become due therefore in accordance with the terms of payment.

**COST OF INSURANCE AND TRANSPORTATION:** If this Agreement provides that Seller shall pay insurance and transportation costs, they shall be the applicable rates in effect on the date this Agreement is signed by Seller. If for any reason the cost of insurance or transportation increases prior to shipment, such increase shall be the responsibility of and charged to the Buyer.

**TAXES AND OTHER LEVIES:** If any tax, public charge, tariff, duty, or increase therein, other than the Seller's income taxes, is now, or shall be assessed, levied, or imposed upon the Products to be sold, or the Services to be provided, or upon any sale, delivery or other action taken hereunder, or upon export or import of the Products, or if any change shall hereafter be made in the present custom house or railway classification of the Products or in the existing freight rates applicable thereto, the burden of such charge shall be borne by Buyer.

### **BUYER RESPONSIBILITIES:**

- a. Buyer shall provide electrical power to portable electric tools, sufficient light, elevator service for both personnel and material where required, and reasonable cooperation of its employees. Buyer shall assist Seller's personnel to store tools and materials in locations reasonably convenient to the installation site and not subject to pilferage. In addition, a 120 VAC 15 AMP separate circuit must be supplied within 10 feet of Seller's control panel.

- b. If devices for a system are located in an elevator shaft or pit, Buyer is responsible to have a certified elevator technician on-site during the Seller's inspection to lock-out the elevator and reset after testing is complete.
- c. If a fire sprinkler system is being inspected, Buyer shall be responsible for maintaining adequate heat throughout the Premises to prevent freezing or damage to the existing fire sprinkler system.
- d. If a fire sprinkler system is being inspected, Buyer understands and expressly acknowledges that fire protection systems are susceptible to damage by water intrusion, ice, or other conditions inside the piping that Seller cannot detect upon inspection. In the event that water, ice, or other conditions occur which render the fire protection system inoperable or damaged, Seller expressly disclaims any responsibility for such conditions, and assumes no responsibility to investigate the cause, source or extent of such condition.
- e. Buyer acknowledges this warning and acknowledges that under NFPA and other applicable codes and regulations, it is the responsibility of the Buyer to maintain the fire protection system, including but not limited to ensuring proper drainage. Failure to properly maintain or drain the fire protection system may lead to breaks or other conditions that may render the fire protection system inoperable, or that damage to the fire protection system may result in injury, damage to property and loss of use.
- f. Seller will perform the inspection services per the frequency directed by customer (annual/semi-annual/quarterly/etc.). Code may require certain inspection and testing done (i.e. back-up battery testing) that may be necessary at more frequent intervals than what Seller is contracted for. Buyer is responsible for any components of inspection and testing needed at more frequent intervals than what Seller is contracted to do.

**REPAIR:** Seller shall not be obliged to repair or redecorate due to spalling of concrete or plaster, installation of piping, conduit, raceways, cylinders, wiring or mounting of control equipment or for any other reasons, unless expressly otherwise stated.

**DAMPERING:** Dampening and air control will be the Buyer's responsibility.

**CONCENTRATION TEST:** A full or partial discharge concentration test, if required, will not be made unless specifically stated in this Agreement. To assure sufficient concentration levels in accordance with requirements of the authorities having jurisdiction, room integrity (tightness) of the area where the Products are located shall be Buyer's sole responsibility. If additional discharge concentration tests are necessary due to failure of Buyer to assure room integrity (tightness) of the area where the Products are located or for any other reason in the control of or the responsibility of Buyer, the expense of such additional tests shall be added to the Purchase Price.

**LABOR CHARGES:** The Purchase Price includes labor charges for labor performed during the Seller's ordinary business hours. If the Buyer requires the Seller to perform work after ordinary business hours or on weekends, any overtime compensation paid by the Seller to its employees and by the Seller's subcontractors to the subcontractors' employees shall become an addition to the Purchase Price and shall be paid by Buyer.

**TIME LIMITATION:** All claims, actions or proceedings, legal or equitable, against Seller must be commenced in court within one (1) year after the cause of action has accrued, or the act, omission or event occurred from which the claim, action or proceeding arises, whichever is earlier, without judicial extension of time, or said claim action or proceeding is barred, time being of the essence of this paragraph. Buyer expressly waives any statutory and/or common law limitation period to the contrary.

**WAIVER OF SUBROGATION:** In case of any claim or loss, Buyer agrees that it is responsible to maintain, and has sufficient insurance coverage to cover, any potential claim or loss. Buyer further agrees to look to its property and/or general liability insurance carrier for reimbursement. Buyer and Seller mutually agree to release one another from any and all claims with respect to any loss covered by (or which should have been covered) the insurance coverages, which were required and/or recommended that may be applicable to any property where Seller performs Services and/or provides Products for Buyer. For purposes of this Section, all deductibles shall be considered insured losses. The parties further mutually agree that their respective insurance companies shall have no right of subrogation against the other on account thereof.

**LIMITATION OF LIABILITY:** SELLER'S TOTAL LIABILITY TO BUYER FOR ANY CLAIMS, LOSSES OR DAMAGES (INCLUDING ATTORNEYS' FEES) ARISING OUT OF OR IN ANY WAY RELATED TO ANY CAUSE WHATSOEVER IN RELATION TO THE PURCHASE OF PRODUCTS UNDER THIS AGREEMENT, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, BREACH OF WARRANTY OR OTHER CAUSE, SHALL BE LIMITED TO THE REPLACEMENT OF THE PRODUCTS OR A RETURN OF THE PURCHASE PRICE AT SELLER'S DISCRETION. SELLER'S TOTAL LIABILITY TO BUYER FOR ANY CLAIMS, LOSSES OR DAMAGES (INCLUDING ATTORNEYS' FEES) ARISING OUT OF OR IN ANY WAY RELATED TO ANY CAUSE WHATSOEVER IN RELATION TO SERVICES PROVIDED UNDER THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO DATA BREACH, HACKING EVENT, OR ANY OTHER CYBER, COMPUTER, OR INTERNET-RELATED LOSS, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, BREACH OF WARRANTY OR OTHER CAUSE, SHALL BE LIMITED TO THE RETURN OF THE PURCHASE PRICE. NOTWITHSTANDING THE FOREGOING SENTENCES, UNDER NO CIRCUMSTANCES SHALL SELLER BE LIABLE FOR ANY DAMAGES (INCLUDING ATTORNEYS FEES) FOR LOSS OF USE, INTERRUPTION OF BUSINESS, LOST PROFITS, REVENUE OR OPPORTUNITY, CLAIMS OF THIRD PARTIES OR FOR INJURY TO PERSONS OR PROPERTY OR FOR ANY OTHER SPECIAL, EXEMPLARY, INCIDENTAL, INDIRECT, PUNITIVE, CONSEQUENTIAL OR OTHER DAMAGES OF ANY KIND OR NATURE.

**INDEMNIFICATION:** Buyer shall indemnify and hold harmless Seller from and against all claims, damages, losses and expenses (including attorneys' fees) arising out of the use, operation, alteration or modification of the Products or the Services provided by Seller provided that any such claim, damage, loss of expense is attributable to bodily injury, sickness, disease or death or to injury to or destruction of tangible property including the loss of use resulting therefrom, and is caused in whole or in part by: (a) any act or omission of Buyer or anyone directly or indirectly employed by or serving Buyer regardless of whether or not it is caused in part by Seller, (b) any data breach, hacking event, or any other cyber, computer, or Internet-related loss, or (c) any alteration to or modification of the Products unauthorized by Seller. This indemnity includes claims brought by any third party, including, without limitation, Buyer's insurance company, whether the claim arises under this Agreement, warranty, tort, or any other theory of liability.

**ESCALATION CLAUSE:** In the event of significant delay or price increase of any material (including steel, wood, PVC, copper, electrical components, other raw materials or parts, etc.) occurring during the performance of the contract through no fault of Getz Fire Equipment, the Contract Sum, time of completion, or contract requirements shall be equitably adjusted by Change Order. A change in price of an item of material will be considered significant when the price of an item increases 5% or more between the date of the signed contract or date of PO issuance and the date of installation.

**GOVERNING LAW:** This Agreement is to be governed by, construed, and enforced with the laws of the State of Illinois and, when applicable, the Code. Buyer and Seller agree that any action brought by any party shall be brought and resolved exclusively by the state and federal courts located in Peoria County, Illinois.

**SEVERABILITY:** If any provision of this Agreement is held illegal or unenforceable in a judicial proceeding, such provision shall be severed and shall be inoperative, and the remainder of this Agreement shall remain operative and binding on all parties.

**CLAUSE PARAMOUNT:** In the event of any conflict between the terms of this Agreement and the terms of a schedule, confirmation or other documents purporting to establish the terms and conditions of the sale of the Products or provision of Services, the terms of the schedule, confirmation or other documents shall prevail. BUYER'S ACCEPTANCE OF THIS AGREEMENT IS EXPRESSLY LIMITED TO THE TERMS OF THIS AGREEMENT.

**ENTIRE AGREEMENT:** This Agreement constitutes the entire agreement between the parties and no modification shall be effective unless agreed upon by both parties in writing. This Agreement supersedes all prior agreements between the parties with respect to its subject matter and constitutes (along with the documents referred to in this Agreement) a complete and exclusive statement of the terms of the agreement between the parties with respect to its subject matter.

**REPRESENTATIONS:** Buyer and Seller agree that no representations have been made or relied upon, except as specifically stated in this Agreement.