



Smiths Detection

Quotation for:

Lincoln-Lancaster County Health Dept
 3140 N Street
 Lincoln, NE 68510

DATE: 7/25/2011
 QUOTATION NO.: O6UJ9A00050R
 PAGE NO.: Page 1 of 6
 TERMS: Net 30
 VALID UNTIL: 10/23/2011
 DELIVERY: See Terms & Conditions Summary Page
 WARRANTY: One year parts and labor
 DELIVERY TERMS: EX Works Danbury, CT
 Federal ID#: 22-355-2823

Item	Qty	Part No.	Description	Base Price	Net Price
1	1	23317	<p><u>HazMatID 3 Year Partnership Program with 360 Upgrade</u></p> <p>023-4114 HazMatID 360 Upgrade Bluetooth Wireless Upgrade (for Command and Extended systems) 023-4041 Upgrade to 400 MHz Processor included for S/N 708 and below 000-0780 Aldrich-IChem Priority Materials Library (for systems that do not have the Aldrich-IChem Library Package) Free software updates All parts and labor to repair system in the event of a malfunction Free loaner (delivered by overnight carrier) if system malfunctions Annual one-day on-site HazMatID 360 refresher 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</p> <p>Previous results collected on the HazMatID will not be viewable after upgrading to the HazMatID 360 software. Reports of all previous results should be exported and/or all result files, methods, and libraries should be backed up before upgrading. A CD-ROM containing HazMatID version 3 software will be delivered as part of the upgrade for viewing old data on a computer that is running the Windows-XP or Windows 7 operating system. The v3 software must not be installed on the same laptop computer that is used for command control of a HazMatID 360 or on the upgraded HazMatID 360 unit.</p> <p>Please note that user libraries created on the Traveller or previous versions of the HazMatID may not generate comparable search results on the HazMatID 360 due to the inherent differences between the library search algorithms. As a result, only user libraries generated on the HazMatID 360 are covered by product warranties and ReachBack services.</p> <p>This upgrade includes shipping within the Continental US, but no loaner system.</p> <p>Prerequisite Requirement: Systems that are currently not covered under warranty are required to pass the Performance Validation Test as described in the User's Guide before being eligible to receive the 360 Upgrade or coverage under our Partnership program. Contact our Service Department at 866-442-0628 for assistance.</p> <p>For HazMatID, serial number 03190304A.</p>	\$15,000.00	\$13,500.00
TOTAL:					\$ 13,500.00



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<p>(i) cease the supply of further Goods/Equipment under this Order without liability for any loss (including loss of profit or other financial or economic loss) to Customer until such sum, together with such interest as may be due thereon, is paid; or</p> <p>(ii) terminate the Order and any other agreements between Smiths and Customer, whether or not any sums are due for payment by Customer thereunder, without liability on the part of Smiths. Customer shall pay Smiths immediately all sums due and outstanding under all such agreements with respect to Goods/Equipment, services, components, parts, and other materials supplied or ordered in partial execution of the agreements, together with all overhead and other costs incurred by Smiths as a result of such termination.</p> <p>(C) No defect in the Order Goods/Equipment shall operate to interfere with the terms of payment. If payment is not made as provided above, Customer shall thereby be deemed to have waived the warranties (merchantability, fitness or otherwise, whether express or implied) provided in Section 8 hereunder. Smiths may demand different terms of payment from those specified on the face of this Order, whenever it reasonably appears that Customer's financial condition requires such changes, and may demand assurance of the Customer's ability to pay whenever it reasonably appears that such ability is in doubt. Such demand shall be in writing and Smiths may, upon making such demand, stop production and/or suspend shipments hereunder.</p> <p>(D) If Customer is in default of any payment obligation, Smiths is, without reminder and prejudice to any other rights, entitled to charge interest at a rate of 1.5 times the legal interest for any outstanding sum, beginning with any due date of payment.</p> <p>5. RETURN OF GOODS: There will be a 20% restocking fee, in addition to any shipping costs incurred and our technician's expense, if applicable, for all returned items.</p> <p>6. LIENS AND TITLE: (A) Customer hereby grants to Smiths a security interest in any property owned by the Customer (including Customer's beneficial rights to property leased by Customer) in the possession of Smiths or any of Smiths' affiliates, at any time, to secure all amounts owed by Customer to Smiths under this Order.</p> <p>(B) In the case of repairs or overhauls performed pursuant to this Order, Customer agrees to grant Smiths a perfected security interest in all Goods/Equipment retained in possession of Smiths upon which any repair or overhaul services have been performed by Smiths. Customer further acknowledges and agrees that, in addition to the security interest and lien expressly granted by Customer to Smiths, Smiths shall have a lien on the Goods/Equipment retained in possession of Smiths to the extent otherwise provided by law. Customer acknowledges that the lien (whether granted by Customer or through the operation of law) for repairs or overhaul shall be for the full value of such work, and shall be superior to any lien or interest in favor of Customer, its parents, affiliates, or subsidiaries, or any other person who has knowledge of this Order. To the extent that Smiths maintains possession of Goods/Equipment under repair, Customer agrees that Smiths is a secured creditor of Customer and has all the rights of a secured creditor.</p> <p>(C) With respect to Goods/Equipment sold pursuant to this Order, Customer agrees and acknowledges that Smiths shall retain a security interest in such Goods/Equipment, unless and until all payment for Goods/Equipment has been made and all other covenants and agreements of this Order have been performed in full. Accordingly, Customer agrees that it will not suffer or permit any lien or encumbrance to be established that effects the title to the Goods/Equipment sold by Smiths pursuant hereto until Smiths has been paid in full. Customer agrees that, in the event of Customer's insolvency, or in the event that any petition is filed by or against Customer under Chapter 7 or Chapter 11 of the Bankruptcy Code, Smiths may, at its discretion, recover all Goods/Equipment sold pursuant to this Order and/or seek damages or costs under applicable laws.</p> <p>7. DELIVERY: (A) Unless otherwise agreed to in writing, Smiths shall deliver the Order Goods/Equipment FOB destination; freight prepaid by Smiths and added to invoice, GSA freight paid by Smiths, to the place of shipment named herein within a reasonable time after receipt by Smiths of Customer's written acceptance. Typically, our customer will be contacted 24 hours prior to delivery. Typically transit time will be 7-10 business days from date of pickup from the Smiths Detection Inc. warehouse. Deliveries will be made during normal business hours Monday through Friday. One attempt to deliver will be made. Should delivery need to be rescheduled, any additional costs incurred for redelivery and/or storage fees, will be charged to the customer. Smiths shall use reasonable efforts to make timely delivery but shall be excused from any delays arising out of causes beyond its reasonable control. Any specific delivery dates that may be stated are approximate. Smiths shall, under no circumstances, be liable for damages, incidental or consequential (hereinafter contemplated as including, but not limited to, damages for lost profits, lost sales and injury to person or property), for delays, or failure to give notice of delay, whether or not caused by or resulting from Smiths' negligence. Customer agrees not to make such claim on Smiths.</p> <p>(B) If proper tender of the Goods/Equipment is made and completion of delivery is prevented through no fault of Smiths, Smiths may specify a reasonable alternative place of delivery. Customer agrees that all costs of storage and transport incurred following an initial attempt at delivery are hereby allocated to and imposed upon Customer, and shall be added by Smiths to the sale price. Delivery may at any time be withheld by Smiths pending payment of any sum due from the Customer to Smiths under this Order or any other agreement. Smiths will return Goods/Equipment via the incoming method unless an alternative method has been indicated on the purchase order or a change authorized by the Customer representative. Please note that the above delivery statement does not apply for deliveries made outside the 48 contiguous States. See quotation for delivery terms and conditions.</p> <p>8. DELIVERY REQUIREMENTS: The client is responsible for assuring access points for delivery of equipment when necessary and is required. In an effort to assure a successful delivery, we kindly ask that our clients take the time to fill out the "Delivery Requirements" form.</p> <p>9. DELIVERY INSPECTION REPORT: In an effort to help protect both Smiths Detection Inc. and our clients, we ask that before signing for receipt of your equipment, you take a few minutes to conduct a thorough evaluation of the exterior of the system and complete the "Delivery Inspection Report" provided by the contracted trucking company.</p> <p>10. STORAGE FEES: A storage fee will be applied monthly up to the maximum allowed by law on all repaired and overhauled units if delivery is not taken within five (5) days of notification.</p> <p>11. WARRANTIES: See the attached "Warranty", which is incorporated herein by reference.</p> <p>12. TRADEMARKS/COPYRIGHTS: Smiths makes no warranty that the Order Goods/Equipment are free from, and shall not be liable to Customer for, infringement of the intellectual rights (including patents, trademarks and copyrights) of others, and Customer agrees to assume all risks associated therewith. Customer agrees to hold Smiths harmless against any claim for infringement arising out of compliance with Customer's drawings, specifications, requirements or instructions.</p> <p>13. LIMITATIONS OF LIABILITY AND INDEMNITY: (A) Customer and Operator understand that the Goods/Equipment are designed to be used as tools by personnel trained in attempting to detect the possession and/or transportation of threatening materials. The level of success of such detection attempts is dependant on numerous factors, including but not limited to, the sophistication of efforts to conceal such materials, the size, type and quantity of the conditions. Accordingly, Smiths makes no guaranty or warranty as to the results that will be achieved through the use of the Goods/Equipment, and it is agreed that the sole responsibility for such results shall be borne by Customer.</p> <p>Accordingly, Smiths makes no guaranty or warranty as to the results that will be achieved through the use of the Goods/Equipment, and it is agreed that the sole responsibility for such results shall be borne by Customer.</p> <p>(B) AS PROVIDED IN THE WARRANTY INCORPORATED HEREIN PURSUANT TO SECTION 11 ABOVE, SMITHS' LIABILITY FOR BREACH OF WARRANTY SHALL BE</p>					



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DELIVERY: See Terms & Conditions Summary Page

WARRANTY: One year parts and labor

DELIVERY TERMS: EX Works Danbury, CT

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LIMITED TO THE REMEDIES THEREIN PROVIDED. WITH RESPECT TO OTHER BREACHES OF CONTRACT, SMITHS SHALL HAVE NO LIABILITY IN EXCESS OF THE AMOUNT OF THIS ORDER. IN NO EVENT SHALL SMITHS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, OR OTHER DAMAGES, INCLUDING, WITHOUT LIMITATION, ANY DAMAGES RESULTING FROM COST OF SUBSTITUTE PROCUREMENT, LOSS OF USE, LOSS OF DATA, LOSS OF PROFITS, LOSS OF SAVINGS, LOSS OF REVENUES, LOSS OF BUSINESS, OR FAILURE OR DELAY IN PERFORMANCE, WHETHER BASED ON BREACH OF WARRANTY OR OTHER CONTRACT BREACH, NEGLIGENCE OR OTHER TORT OR ON ANY STRICT LIABILITY THEORY, EVEN IF SMITHS HAS BEEN ADVISED OF THE POSSIBILITY OF ANY SUCH DAMAGES. NOR SHALL SMITHS BE RESPONSIBLE FOR ANY CLAIM AGAINST CUSTOMER BY A THIRD PARTY.

(C) To the fullest extent permitted by applicable law, Customer shall defend, indemnify, and hold harmless Smiths and its affiliates and their respective officers, partners, directors, employees, agents, successors, and assigns ("Smiths Parties") from and against any and all losses, claims, damages, liabilities, expenses (including, without limitation, fees and disbursements of legal counsel and expenses of litigation) or other obligations (collectively "Losses") and threatened Losses to the extent they arise from or in connection with the purchase and/or operation of the Goods/Equipment by Customer or Owner, 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 Customer in the performance of this Order that causes Smiths 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 Customer, 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 Customer or Operator, whether based on warranty or other contract breach, negligence or other tort or on any strict liability theory, for matters disclaimed in subsection (B) above. Customer shall fully indemnify and completely hold harmless the Smiths Parties as provided above, whether or not negligence or other fault of any of the Smiths Parties contributed to, or is claimed or alleged to have contributed to, the claim, action, damage, loss, cost, liability or expense. The only instance in which Customer shall not fully indemnify and completely hold harmless the Smiths Parties as set forth above is where the claim is based solely upon the alleged fault of Smiths and Smith's fault is adjudicated to be the sole cause of all of the Losses.

(D) Smiths shall not be liable for failure to deliver, for delay in delivery, or for any losses or damage to Customer, or to the Goods/Equipment occasioned by delays, in the performance of Smiths obligations, due to: (i) any cause beyond Smiths reasonable control or the control of Smiths suppliers or subcontractors; (ii) an act of God, act or omission of Customer, act of civil or military authority, fire, strike or other labor difficulty, riot or other civil disturbance, insolvency or other inability to perform by the manufacturer, delay in transportation; or (iii) any other commercial impracticability.

(E) The conditions to performance specifically stated in this provision and elsewhere in this Order shall be the only conditions precedent or subsequent to an absolute duty of performance on the part of Customer and Smiths. Any official action or legal proceeding by Customer in connection with this Order, other than provided for elsewhere in this Order, must be commenced within one (1) year from delivery. In no event of breach or repudiation of this Order by Smiths shall Smiths be liable for indirect, special, third party, incidental, or consequential damages, including without limitation lost profits, data, or goodwill, and Customer hereby agrees not to make any such claim on Smiths. Customer agrees to defend, indemnify and hold harmless Smiths from and against any claim, loss, liability, expense or damage (including liens or legal fees) incurred by Smiths with respect to any of Customers export or re-export activities contrary to Section 19 Export & Import Controls.

14. TAXES: Sales and use taxes, payable by Customer, which are presently or may hereafter be imposed by any taxing authority, are not included in the sale price. Any direct or excise tax or import or customs exaction payable by Smiths, which may hereafter be imposed by any taxing authority, wheresoever located, upon the manufacture, sale or delivery of products covered by this order, or any increase in rate of any such tax or import or customs exaction now in force, shall be added to the sales price. If such charge is not collected at the time of payment or sale price, Customer will hold Smiths harmless.

15. CHANGES AND TERMINATION: (A) Smiths shall have the right, in its sole discretion, to terminate this Order if Customer: (i) 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; or (iv) commits a substantial breach of this Order which is incapable of remedy.

(B) Customer may make a written request for amendment, modification, or termination. If a request for amendment or modification is accepted by Smiths, and any changes cause an increase or decrease in the cost of, or the time required for, the performance of any part of the work under this 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, Customer shall have the right to prescribe the manner of disposition of such property. If request for termination is accepted by Smiths, equitable provision shall be made to Smiths 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 Smiths adequate reason to demand written assurance of Customer's ability and intent to carry out the Order.

16. MERGER AND SEVERABILITY: This Order contains the total agreement of the Parties, and all agreements entered into prior to or contemporaneously with the execution of this agreement are excluded whether oral or in writing, except that a contemporaneous writing, signed by both Parties, and firmly attached to this tender, shall be considered part hereof. If any provision of this Order shall be determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not effect the remaining provisions of this Order, all of which shall remain in full force and effect.

17. DISPUTE RESOLUTION, GOVERNING LAW, AND FORUM: (A) This Order shall be governed by, and construed in accordance with, the laws of the State of [jurisdiction], without the application of conflict of laws principles. 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.

(B) In the event a dispute arises under or relates to this Order, the Parties shall diligently attempt to resolve the dispute within thirty (30) days from the date either Party gives written notice to the other of its intent to invoke this provision, during which period neither Party may commence legal action to assert its rights against the other. In the event the Parties do not resolve the dispute within the thirty (30) day period referenced above, either Party may institute legal action to pursue any right or remedy it may have against the other Party. Any legal action or proceeding with respect to this Order shall be brought and maintained in the courts of the State of [jurisdiction] or of the United States of America for the District of [jurisdiction]. By execution of this Order, Customer hereby accepts for itself and in respect of its property, generally and unconditionally, the jurisdiction of the aforesaid courts. No action in law or equity arising out of this Order may be brought by Customer more than two years after the cause of action has first arisen.

(C) Customer further irrevocably consents to the service of process out of any of the aforementioned courts in any such action or proceeding if such process shall be in writing and either



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shall be delivered in person or sent by registered or certified mail (return receipt requested), postage pre-paid, and addressed to Customer at the address of Customer for notices under this Order. Nothing herein shall affect the right of Smiths to serve process in any other manner permitted by law or to commence legal proceedings or otherwise proceed against Customer in any other jurisdiction.

(D) Smiths shall have the right to collect from Customer its reasonable expenses, including attorneys' fees, incurred in enforcing this Order.

(E) The rights and obligations herein shall survive completion of the final payment under this Order.

18. CONFIDENTIALITY: The Parties agree that, in the course of performance of this Order, 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 Goods/Equipment shall be considered Smiths proprietary information. To accomplish this confidentiality, the Parties agree as follows: any Party disclosing confidential information to the other Party shall identify such information as confidential when disclosing it. The receiving Party shall not disclose confidential information of the disclosing Party to any person outside its employ, except when authorized by the disclosing Party. Any Party receiving confidential information under this Article shall maintain such information in confidence in the same manner it protects its own confidential information and shall use it only for the performance of this Order, and for no other purpose.

19. EXPORT AND IMPORT CONTROLS: Customer acknowledges and agrees that the Ultimate Destination of the Order Goods/Equipment is in the United States, unless otherwise agreed to in writing. Customer shall not authorize or permit its employees, distributors, customers, brokers, freight forwarders, and/or agents to export or re-export any of the Order Goods/Equipment to any foreign person without complying with applicable import and export laws and regulations of Customer's country and of the United States, including the International Traffic in Arms Regulations (ITAR) and the Export Administration Regulations (EAR). Customer agrees to obtain and properly utilize U.S. Government export authorization prior to exporting or re-exporting the Order Goods/Equipment, either in their original form or after being incorporated into other end-items.

20. NOTIFICATION: Customer agrees to notify Smiths immediately if Customer is listed in any Denied Persons List, Entity List, or Specially Designated Nationals List, or if Customer's export privileges are otherwise denied, suspended or revoked in whole or in part by any U.S. Government entity or agency.

21. LICENSE AND OWNERSHIP: To the extent that the Order Goods/Equipment contain or are software, Smiths hereby grants to Customer a non-exclusive, non-transferable, personal license to use the software and related documentation. Customer's use of the Order Goods/Equipment conclusively evidences its acceptance of this license and this Order, including this Section 20. Title to the software shall at all times remain with Smiths. Customer agrees that the software, all enhancements, related documentation, and derivative works are, and will remain, the sole property of Smiths and includes valuable trade secrets. Customer 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. Customer agrees to not disassemble, decompile, reverse engineer, create derivative works from or otherwise translate, customize, localize, modify, add to, or in any way alter, rent, or loan the software or related documentation.

22. ASSIGNMENT: Neither Party shall assign this Order without the prior written consent of the other Party, except that Smiths may assign it to any of its parent, sister, or affiliate companies.

23. RELATIONSHIP: Nothing in this Order shall be construed to place the Parties in the relationship of partners or joint ventures, and the Parties shall have no power to obligate or bind the other in any manner whatsoever.

24. HEADINGS: Any headings or paragraph titles are for the convenience of reference only and shall not define, limit, or extend the scope or intent of this Order or any provision thereof.

25. PROPRIETARY INFORMATION STATEMENT: This quotation contains information proprietary to Smiths Detection, Inc. No part of this information may be reproduced or transmitted in any form without the prior written permission of Smiths Detection Inc. This quotation supersedes all previous quotations and is valid for 90 days from date of issue, unless otherwise stated.

26. INSTALLATION & TRAINING: This installation and training provision only applies to X-Ray equipment. Installation is not included for TRACE products unless otherwise denoted on quotation.

The cost of installation and training, for the X-ray equipment (160 Kv or lower) purchased, is included within Smiths Detection Inc.'s proposal, provided the installation is scheduled within 90 days from the date the unit shipped. This includes one visit to the client's facility where the installation and training will be conducted during normal business hours Monday through Friday. Please note that installation and training is only included for equipment delivered and installed within the 48 contiguous States.

Once the client receives the equipment, they must contact the Smiths Detection Inc. Service Department at 800-297-0955 to confirm receipt and a visit will be scheduled for a mutually agreed upon date.

During this visit, the 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 client's personnel on the start-up and fail-safe features, basic usage and software features of the equipment purchased.

Warranty Statement

(A) Smiths warrants that the Goods/Equipment sold by Smiths, and that is manufactured by Smiths, (a) conforms to Smiths specifications, and (b) is free from defects in materials and workmanship (under normal usage and provided that Smiths' operation and maintenance instructions are followed by competent personnel) appearing within the applicable warranty period set forth in Appendix A. Normal wear and tear shall not be considered a defect.

(B) For equipment that is not manufactured by Smiths, Smiths' only responsibility is to assign to its customer any manufacturer's warranty that does not prohibit such assignment.

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

(D) If the Customer or Operator, as the case may be, discovers a defect within the applicable warranty period, it must be reported to Smiths service department at 1-800-297-0955 immediately upon discovery.

(E) Within a reasonable time after proper notification, Smiths 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, subject to the further applicable terms and conditions set forth in Appendix A. 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 Smith'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 Goods/Equipment of which it is a part, subject to the other terms of this Warranty. The above remedies are the exclusive remedies of Customer and Operator, and the sole responsibility of Smiths, for breach of this Warranty.

(F) Smiths' warranty ceases to be effective if Purchaser fails to operate and use the equipment sold hereunder in a safe and reasonable manner in accordance with Smiths' written



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instructions.

(G) Neither Customer nor Operator shall be entitled to any remedy under this Warranty with respect to

(i) Goods/Equipment that has been subjected to any alteration, disassembly, tampering, modification, or repair without prior authorization by Smiths;

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

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

(iv) Goods/Equipment that has been in storage or immobilized for one year or more after delivery.

(H) SMITHS MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, AND SPECIFICALLY MAKES NO WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE; AND THE EXPRESS WARRANTY SET IN THIS ARTICLE IS IN LIEU OF ANY SUCH WARRANTY AND ANY OTHER OBLIGATION OR LIABILITY ON THE PART OF SMITHS.

(I) For purposes of the exclusive remedies set forth in this Warranty, and the limitations of liability set forth in Section 13 of the Terms and Conditions of Sale into which it is incorporated, "Smiths" shall be deemed to include Smiths, its subsidiaries, and their affiliates, directors, officers, employees, agents, representatives, subcontractors, and suppliers of all of them.

(J) This Warranty is non-transferable and is applicable only to the original Customer or Operator.

(K) This Warranty shall not be extended, altered or varied except by written instrument executed by Smiths.

(L) Any official action or legal proceeding for breach of this Warranty must be commenced within thirty (30) months after acceptance of the Goods/Equipment.

ADDENDUM TO SMITHS DETECTION CUSTOMER TERMS AND CONDITIONS AGREEMENT

The Customer Sales Agreement concerning the Terms and Conditions ("Agreement") between Smiths Detection ("Smiths") and City of Lincoln, Nebraska ("City") shall be amended as follows, and such amendments shall be incorporated into the Agreement. To the extent that this Addendum conflicts with language of the Customer Sales Agreement, this Addendum shall govern.

Paragraph **12. TRADEMARKS/COPYRIGHTS** shall be modified in its entirety as follows:

"12. TRADEMARKS/COPYRIGHTS. Smiths warrants that the Order Goods/Equipment associated with this Agreement are free from infringement of the intellectual rights (including patents, trademarks, and copyrights) of others. Further, Smiths warrants that the consideration for this Agreement includes Smiths' payment for any and all royalties or costs arising from patents, trademarks, copyrights, and other similar intangible rights in any way involved with or related to this Agreement and any goods/equipment associated with it."

Paragraph **13. LIMITATIONS OF LIABILITY AND INDEMNITY (B)** shall be modified in the following manner:

The sentence that reads "WITH RESPECT TO OTHER BREACHES OF CONTRACT, SMITH SHALL HAVE NO LIABILITY IN EXCESS OF THE AMOUNT OF THIS ORDER" shall be stricken from the Agreement. In addition, the following sentence shall be added to the end of the paragraph: "SMITHS SHALL NOT BE RESPONSIBLE FOR ANY CLAIM AGAINST CUSTOMER BY A THIRD PARTY EXCEPT TO THE EXTENT THAT SMITHS IS FOUND TO BE RESPONSIBLE, IN WHOLE OR IN PART, FOR THE DAMAGES SUFFERED BY THE THIRD PARTY INCLUDED IN SAID CLAIM."

Paragraph **13. (C)** shall be modified in the following manner with the underlined language being added and the stricken language being stricken from the Agreement:

"To the fullest extent permitted by law, Customer shall defend, indemnify, and hold harmless Smiths and its affiliates and their respective officers, partners, directors, employees, agents, successors, and assigns ("Smiths' Parties") from and against any and all losses, claims, damages, liabilities, expenses (including, without limitation, fees and disbursements of legal counsel and expenses of litigation) or other obligations (collectively "Losses") and threatened Losses to the extent they are caused in whole or in part by the intentional or negligent act or omission of Customer ~~arise from or~~ in connection with the purchase and operation of the Goods/Equipment by Customer or Owner, including but not limited to 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 Customer in the performance of this Order that causes Smiths to be obligated to indemnify, defend, and/or hold harmless any third party;~~ ~~(iii)~~ (ii) any claim, demand, charge,

action, cause of action, or other proceeding resulting from an act or omission of Customer, its employees, agents, or subcontractors acting in its capacity as an employer with respect to the claimant; and (iv) ~~any claim by Customer or Operator whether based on warranty or other contract breach, negligence or other tort or on any strict liability theory, for matters disclaimed in subsection (B) above. Customer shall fully indemnify and completely hold harmless the Smiths Parties as provided above, whether or not negligence or other fault of any of the Smiths Parties contributed to or is claimed or alleged to have contributed to, the claim, action, damage, loss, cost, liability, or expense. The only instance in which Customer shall not fully indemnify and completely hold harmless the Smiths Parties as set forth above is where the claim is based solely upon the alleged fault of Smiths and Smith's fault is adjudicated to be the sole cause of all of the Losses.~~ Customer does not waive its governmental immunity by entering into this Agreement and fully retains all immunities and defenses provided by law. This section survives termination of this Agreement.

The following sentences shall be removed entirely from Paragraph 13. (E):

“Any official action or legal proceeding by Customer in connection with this Order, other than provided for elsewhere in this Order, must be commenced within one (1) year from delivery. In no event of breach or repudiation of this Order by Smiths shall Smiths be liable for indirect, special, third party, incidental, or consequential damages, including without limitation lost profits, data, or goodwill, and Customer hereby agrees not to make any such claim on Smiths.” Throughout the Agreement, and specifically in Paragraph 17. **DISUPTE RESOLUTION, GOVERNING LAW, AND FORUM**, any and all references to [jurisdiction] mean the State of Nebraska.

Paragraph 17. (D) shall be amended by adding the following underlined language:

“(D) Smiths shall have the right to collect from Customer its reasonable expenses, including court-ordered attorneys’ fees, incurred in enforcing this Order.”

The following sections shall be added to the Agreement:

27. AUDIT PROVISION. Smiths shall be subject to audit pursuant to Chapter 4.66 of the Lincoln Municipal Code and shall make available to a contract auditor, as defined therein, copies of all financial and performance related records and materials germane to this Agreement, as allowed by law.

28. FAIR EMPLOYMENT. Smiths shall not discriminate against any employee (or applicant for employment) with respect to compensation, terms, advancement potential, conditions, or privileges of employment, because of such person’s race, color, religion, sex, disability, national origin, ancestry, age, or marital status pursuant to the requirements of Lincoln Municipal Code Chapter 11.08, and *Neb. Rev. Stat. § 48-1122*, as amended.

29. FAIR LABOR STANDARDS. Smiths shall maintain Fair Labor Standards in the performance of this Agreement, as required by Chapter 73, Nebraska Revised Statutes, as amended.

30. ELIGIBILITY TO WORK. In accordance with Neb. Rev. Stat. 4-108 through 4-114, Smiths agrees to register with and use a federal immigration verification system, to determine the work eligibility status of new employees performing services within the state of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324 a, otherwise known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee pursuant to the Immigration Reform and Control Act of 1986. Smiths shall not discriminate against any employee or applicant for employment to be employed in the performance of this section pursuant to the requirements of state law and 8 U.S.C.A. 1324b. Smiths shall require any subcontractor to comply with the provisions of this section. For information on the E-Verify Program, go to www.uscis.gov/everify.

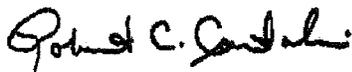
31. CAPACITY. The undersigned person representing the Program Provider does hereby agree and represent that he or she is legally capable to sign this Agreement and to lawfully bind the Program Provider to this Agreement.

Attest:

Chris Beutler, Mayor of Lincoln

City Clerk

Date



Robert C. Cartalemi – Director, Contracts
Smiths Detection Inc.

July 1, 2011
Date