

## KFT FIRE TRAINER – SPARE PART ORDERS TERMS AND CONDITIONS

**ARTICLE 1: TIME OF COMPLETION** KFT Fire Trainer will ship out the Part to the Purchaser's designated site in accordance with schedule set forth in its quotation.

**ARTICLE 2: DELAYS AND EXTENSION OF TIME** Notwithstanding any contract provisions to the contrary, KFT Fire Trainer' acceptance is conditioned on being allowed additional time for the performance of the Work due to delays beyond its reasonable control including, but not limited to, the Force Majeure events set forth in Article 8, and/or the act, omission, neglect, fault or default of others not under the control of KFT Fire Trainer. The additional time allowed shall be, at a minimum, a period equivalent to the delay.

**ARTICLE 3: CONTRACT PRICE AND PAYMENTS** The price to be paid by Purchaser to KFT Fire Trainer for the Part purchased shall be as set forth in KFT Fire Trainer' quotation, which price includes all taxes or contributions at the present rate imposed by the Federal or State governments on KFT Fire Trainer' payrolls and compensation to its employees.

Unless otherwise specified, the prices shown do not include any other taxes. Unless prohibited by statute, Purchaser agrees to pay to KFT Fire Trainer the amount of any Federal, State, City or other tax that KFT Fire Trainer may be required to pay on account of the ownership at the place of delivery, or the manufacture, transportation, sale or use of the part which is the subject of this order.

Payments shall be made to KFT Fire Trainer as set forth in KFT Fire Trainer quotation. Payment with respect to goods ordered is due 30 days following invoice by the KFT Fire Trainer. Purchaser shall reimburse KFT Fire Trainer for its reasonable costs and expenses, including without limitation attorney's fees, incurred in connection with the institution of legal proceedings to collect any past due indebtedness hereunder.

### **ARTICLE 4: ENTIRE CONTRACT**

- (a) These terms and conditions along with KFT Fire Trainer quotation shall constitute the entire agreement between the parties with respect to the subject matter hereof.
- (b) This contract shall supersede all prior oral and written agreements, communications and documents between the parties with respect to the subject matter hereof.
- (c) No agreement or understanding in any way modifying these terms and conditions will be binding upon KFT Fire Trainer unless made in writing and signed by an authorized employee of Purchaser and KFT Fire Trainer.
- (d) The invalidity, in whole or in part, of any of the foregoing articles or paragraphs of these Terms shall not affect the remainder of such articles or paragraphs or any other article or paragraph of these Terms, which shall continue in full force and effect.

**ARTICLE 5: INCREASE IN COST** If the contract delivery schedule is greater than twelve (12) months, the Contract Price may be adjusted annually on the anniversary of the execution date to reflect increases in material and labor costs. If the "Producer Commodity Prices for Metals and Metal Parts Index" increases by 30% or more, the KFT Fire Trainer reserves the right to increase the contract price by 10%.

### **ARTICLE 6: WARRANTY**

- (a) KFT Fire Trainer warrants to Purchaser that the Part will be free from defects in materials or workmanship for a period of one (1) year from the date of Part shipment.
- (b) Warranty adjustment
  1. If any defect appears within the warranty period, Purchaser shall immediately provide KFT Fire Trainer written notice.

2. Purchaser's sole and exclusive remedy shall be for KFT Fire Trainer to repair or furnish a replacement part for any Part, which, upon test and examination by KFT Fire Trainer, proves defective within the above warranty.

### (c) Exclusions from Warranty

1. THE FOREGOING WARRANTIES ARE THE SOLE AND EXCLUSIVE WARRANTIES GIVEN BY KFT FIRE TRAINER IN CONNECTION WITH THE SERVICES PERFORMED AND PARTS PROVIDED HEREUNDER, AND ARE IN LIEU OF ALL OTHER WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, WHICH ARE HEREBY DISCLAIMED AND EXCLUDED BY KFT FIRE TRAINER, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE.
2. KFT Fire Trainer will not be liable for any special or consequential damages or for loss, damages or expense directly or indirectly arising from the use and maintenance of the Part or any inability to use the part or its attendant equipment either separately or in combination with any other equipment or material or from any other cause, nor shall KFT Fire Trainer be liable for personal injury, death, or property damage arising from or connected with the use or maintenance of the Part made the basis of this agreement or its attendant equipment.
3. The warranty does not extend or apply to any Part deliverable that has been subjected to misuse, neglect, accident, or improper use in violation of any KFT Fire Trainer' operator's manual.
4. The warranty does not extend or apply to any Part that has been repaired, altered, or disconnected by any party other than KFT Fire Trainer unless under the direction of KFT Fire Trainer.

**ARTICLE 7: LIMITATION OF LIABILITY** To the extent permitted by law, the aggregate liability of KFT Fire Trainer hereunder whether in contract, tort (including negligence) or otherwise, will be limited to one times the contract value, provided however the foregoing limitation does not limit the liability of KFT Fire Trainer for any injury to, or death of a person, caused by the gross negligence of KFT Fire Trainer. Under no circumstances shall either party be liable for special, indirect, or consequential damages of any kind including, but not limited to, loss of profits, loss of good will, loss of business opportunity, additional financing costs or loss of use of any equipment or property, whether in contract, tort (including negligence), warranty or otherwise. KFT Fire Trainer will not be liable for any breach of this Contract unless written notice of the claim is given to Contractor within one (1) year of the date of the occurrence of the breach.

**ARTICLE 8: FORCE MAJEURE** Under no circumstances shall either party be liable for any loss, damage or delay due to any cause beyond either party's reasonable control, including but not limited to acts of government, acts of terrorism, strikes, lockouts, other labor disputes, fire, explosion, theft, weather damage, flood, earthquake, riot, civil commotion, war, mischief or act of God. In the event of a force majeure claim by either party, KFT Fire Trainer does not waive Purchaser's duty to comply with the terms of Article 3 or any other payment schedule agreed upon by the parties.

**ARTICLE 9: PROPRIETARY INFORMATION** "Proprietary Information" shall mean all information, data, manuals, drawings, designs, or software disclosed by, authorized to be disclosed by, or otherwise obtained from KFT Fire Trainer, LLC, its affiliates or

## KFT FIRE TRAINER – SPARE PART ORDERS TERMS AND CONDITIONS

subsidiaries, in connection with this contract (including the Statement of Work)

Unless the Purchaser has received Kidde Fire Trainer's express written consent to the contrary, Purchaser shall: (a) use the Proprietary Information solely for the purposes of this contract, and not for any other purpose (including, without limitation, designing, manufacturing, or selling similar equipment), (b) safeguard the Proprietary Information to prevent its disclosure to or use by third parties, (c) not disclose the Proprietary Information to any third party; and (d) not reverse engineer, disassemble, or decompile the Proprietary Information. Except that with respect to (c), Purchaser may disclose Proprietary Information to a third party contracted by Purchaser to perform emergency repair work for the Purchaser, where the item or process concerned is not otherwise reasonably within Purchaser's capabilities to enable timely performance of the work, provided that the disclosure of information shall be made solely for the purpose of repair work for Purchaser and shall be provided together with the legend below.

The attached legend (Attachment A) shall be completed and included on any reproduction which includes any Proprietary Information.

### **ARTICLE 10: SETTLEMENT OF DISPUTES OR DISAGREEMENTS**

In the event of any dispute or disagreement arising under this contract, it is mutually agreed, that upon written notice of either to the other party, both Purchaser and KFT Fire Trainer will attempt settle such dispute or disagreement.

If both parties agree that a dispute or disagreement is of such nature that it cannot be settled as provided for above, then by mutual agreement of the parties such dispute or disagreement may be submitted to arbitration in accordance with the Rules of the American Arbitration Association in which event, the decision of the arbitrators shall be final and binding upon both parties.

**ARTICLE 11: GOVERNING LAWS** The laws of the state of New Jersey, USA excluding its conflict of laws provisions, shall govern the terms of this Agreement and all rights and obligations hereunder. No conflict of laws provisions will be applicable. Provided that the dispute is not submitted to arbitration pursuant to Article 10, any disputes arising from this agreement shall be venue in the Courts of New Jersey.

**ARTICLE 12: ASSIGNMENT** Notwithstanding anything is this agreement, KFT Fire Trainer reserves their right to assign the duties under this agreement to an affiliate or subsidiary.

**ARTICLE 13: EXPORT CONTROL** Purchaser agrees to conduct its operations under this Contract and perform all its responsibilities in full compliance with export and other foreign trade controls under any applicable United States (U.S.) laws restricting sales or transfers to other countries or parties of commodities, software, technology, or technical data. Any other provision of this Contract to the contrary notwithstanding, Purchaser agrees that no commodities, software, technology, or technical data of U.S. origin or with U.S. origin content will be sold, exported, re-exported or transmitted except in full compliance with all applicable laws, including all relevant U.S. government requirements. In addition, Purchaser shall comply with all applicable laws, including U.S. government requirements, governing the transfer of information and items to U.S. embargoed and sanctioned countries and denied and restricted parties. Any violation of this section, as determined solely by KFT Fire Trainer, shall be deemed a material breach of this Contract.

**ARTICLE 14: COMPLIANCE WITH LAWS** Purchaser represents, warrants, certifies and covenants (collectively "Covenants") that it will comply with all laws applicable to the goods, services and/or

the activities contemplated or provided under these Terms, including, but not limited to, any national, international, federal, state, provincial or local law, treaty, convention, protocol, common law, regulation, directive or ordinance and all lawful orders, including judicial orders, rules and regulations issued thereunder.

**ARTICLE 15: FEDERAL ACQUISITION REGULATIONS** The components, equipment and services proposed by Seller are commercial items as defined by the Federal Acquisition Regulations ("FAR") and the prices in any resulting contract and in any change proposal are based on Seller's standard commercial accounting policies and practices which do not consider any special requirements of U.S. Government cost principles and do not meet the requirements of Part 31 of the FAR or any similar procurement regulations. Seller agrees only to perform a contract for the sale of a commercial item on a fixed-price basis. In addition, Seller will not agree to submit or certify to any cost or pricing data nor will Seller agree to any requirements to establish price reasonableness under FAR Part 15 or such similar regulations. In stating its position, Seller refers to FAR Part 12 - "Acquisition of Commercial Items." All Sales under \$3,000 are made pursuant to FAR Part 13, Simplified Acquisitions.

### **Attachment A: Limited Rights Legend**

Contract No.

Purchaser:

Contractor: KFT Fire Trainer, LLC

Acceptance of the attached or enclosed Proprietary Information shall indicate your agreement to the following:

Unless the recipient of this Proprietary Information has received Kidde Fire Trainer's express written consent to the contrary, the recipient shall: (a) use the Proprietary Information solely for the purposes of the above identified contract, and not for any other purpose (including, without limitation, designing, manufacturing, or selling similar equipment), (b) safeguard the Proprietary Information to prevent its disclosure to or use by third parties, (c) not disclose the Proprietary Information to any third party; and (d) not reverse engineer, disassemble, or decompile the Proprietary Information.

All Proprietary Information delivered hereunder shall remain the property of KFT Fire Trainer, LLC.