1. DEFINITIONS
(a) “Company” means Smiths Detection Montréal Inc., 6665 Century Avenue, Suite 3002, Mississauga, Ontario, Canada L5N 7K2.
(b) “Equipment” means all components, spare parts, goods, equipment, or materials of any kind, which have been supplied by the Company under Purchaser’s Purchase Order.
(c) “liability whatsoever” shall include, without prejudice to the generality of the foregoing, contained in any order by the Purchaser.
(d) “Equipment” means all components, spare parts, goods, equipment, or materials of any kind, which have been supplied by the Company under Purchaser’s Purchase Order.
(e) “Order” or “Purchase Order” shall mean the agreement between the Parties for the sale and purchase of the Equipment/Services, referencing the Terms of Service and any other contemporaneous writing, signed by both Parties.
(f) “Purchaser” means the company, firm or individual who has bought, or agreed to buy, the Equipment and/or Services.
(g) “Service Agreement” means the agreement between the Company and the Purchaser (individually “Party” and collectively “Parties”) for the sale and purchase of the Equipment/Services, referencing the Terms of Service and any other contemporaneous writing, signed by both Parties.
(h) “Services” means all services, including maintenance and installation services, and operator training where applicable, provided under the Service Agreement.

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 Service Agreement.
(b) The acceptance of the Service Agreement 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, technical specifications and other published matter are approximate only and none of these form part of any contract or give 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’s representatives or other person to whom the Purchaser shall provide the Services 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.

3. PRICE
(a) Unless otherwise agreed in writing, full payment in CAD Dollars for the Services shall be made within 30 days of the invoice date.
(b) 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’s representatives or other person to whom the Purchaser shall provide the Services 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 CAD Dollars for the Services not later than 30 days after the date of the invoice relating thereto or, if earlier, the day on which a fraudulent 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 percent per annum or the maximum rate allowable by law. Time of payment shall be of the essence.
(b) Failure to make the payment or any part thereof and other moneys payable by the Purchaser hereunder when due will also entitle the Company to refuse to provide the Services under this contract or under any other contract with the Purchaser or under any other contract with the Purchaser and without incurring any liability whatsoever to the Purchaser for any delays.
(c) The Company shall, in the event of the Purchaser being insolvent or failing to pay the Service price due under any other contract with the Company, be entitled to suspend or cancel all or any part of the Equipment 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 Service Agreement, the Purchaser hereby grants to the Company a perfected security interest in all Equipment retained in possession of the Company upon which any repair or overhaul services have been performed by the Company.
(d) The Purchaser shall, in the event of the Purchaser being insolvent or failing to pay the Service price due under any other contract with the Company, be entitled to suspend or cancel all or any part of the Equipment 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 Service Agreement, the Purchaser hereby grants to the Company a perfected security interest in all Equipment retained in possession of the Company upon which any repair or overhaul services have been performed by the Company.
(e) 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. DELIVERY
(a) Unless otherwise agreed in writing and to the extent applicable all shipments of Equipment made by the Company shall be Ex-Works Company’s Designated Facility (INCOTERMS 2010).
(b) Unless otherwise stated in writing any time or date for the delivery shall run from the date communicated to the Purchaser.
(c) 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 unsecured by the Purchaser and all liens or security interests granted herein may not be subordinated by the Purchaser.
(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, authorizations and consents (including any such liens or security interests granted herein) for forwarding the Equipment or if there is any other Purchaser Delays, the Company shall pay to the Company all storage and insurance costs and any other out of pocket expenses incurred arising from such delay.
(e) The Company reserves the right to take delivery of the Equipment and/or Services when they are delivered or tendered for delivery and title and risk of loss shall transfer to the Purchaser pursuant to the delivery terms in 5(a) above. 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 Delays, the Company shall be entitled to invoice the Purchaser for the reasonable costs of re-delivery, storage, insurance 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 Equipment as described. The Company shall be entitled to invoice the Purchaser for the reasonable costs of re-delivery, storage, insurance 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.
(g) Unless otherwise agreed in writing the Company is not obligated to make partial deliveries by instalments and (where the Company has agreed to be responsible for delivery of the Equipment to the Purchaser) to determine the route and manner of delivery of the Equipment and shall not 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 this Section (including but not limited to any of theDefinitions).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.

6. TERMS OF SERVICE

(a) The Company shall not be required to provide Services in the event of any of the following: moving of the Equipment; damage to the Equipment caused by external sources or Force Majeure; Buyer's negligence or abuse; special modifications including, without limitation, tunnel extensions, connect of units to custom or non-Company-provided Baggage Handling System, or UPS; damage to equipment which has been dropped, bumped, or abused by Buyer; contamination of Equipment with substances that may present health & safety risk; or for any damage caused by Buyer other than ordinary use. System Regeneration requirements, where applicable, are not included in this agreement.

(b) All Services shall be performed between the hours of 8:00 a.m. and 5:00 p.m., local time, Monday through Friday, exclusive of the Company's published holidays, unless work outside these hours is approved in advance by Smiths or where the customer will be responsible for payment at the then-current Company billable rates.

(c) Unless otherwise specified in a given Service Agreement, the prices specified are for equipment coverage for 12 months.

(d) Equipment not currently covered by a Company Service Agreement must be inspected by an authorized Company Service representative and must be deemed in good working condition prior to inclusion in a Services Agreement. A flat fee for inspection may apply in addition to coverage to units in good working order. The Company reserves the right to refuse coverage of any Equipment for any reason.

(e) When required, replacement parts may be new or refurbished. Replacement parts carry a standard Company warranty for 90 days from installation, or for the remainder of the coverage of the Service Agreement, whichever is longer.

(f) Service Agreements which priced at the Multi-System or Multi-Year discount shall provide for the full, non-discounted price in the event of an authorized cancellation or other interruption of the Agreement.

(g) Cancellation. If this Service Agreement is cancelled by the customer, without cause, a 25% cancellation fee will be charged; the Purchaser must provide at least 30 days prior written notice to the Company to cancel this Service Agreement without cause. If no Services have been provided, the Company will provide a prorated refund from the cancellation notification date and will not be subject to the 25% cancellation fee. If service has been provided, the greater of the following amounts shall be charged to the Purchaser: (i) The pro-rated amount of the contract price; or (ii) The value of all service rendered to include all parts, labor, travel and expenses during contract term. The prices for parts and labor are calculated using Company standard time and material rates; prices for travel and expenses will be calculated at actual cost. A 25% cancellation fee shall apply in the event of cancellation under Sections 6(g)(i) and (ii), respectively. This cancellation policy only applies to prepaid services and does not apply to fixed rate or flat fee repairs.

(h) Any on-site vendor, certification, regulatory authority, or other applicable fees shall be borne by Buyer.

(i) This Service Agreement does not cover Equipment that has been highly contaminated by foreign substances. Equipment returned to the Company for this reason is assumed to be free of contamination. If the Company has any reason to believe that any Equipment is contaminated, it is the Purchaser's responsibility to have the Equipment decontaminated prior to returning the Equipment to Company. The Purchaser shall be fully and solely liable to the Company for the costs of any action taken by the Company to address the Purchaser's failure to abide by this Section 6(i) and shall indemnify and hold the Company harmless accordingly, consistent with the terms of Section 8 herein.

(j) Buyer agrees to ensure the safe and timely return of any loaned Equipment provided under this Agreement. The loaned Equipment must be returned to the Company within two days after Customer's receipt of the repaired equipment or immediately upon request from the Company. Buyer shall be charged current pricing in effect for Products not received at the Company's decontamination facility within 30 days of the agreed return date. Buyer shall be responsible for any damage or loss to the Equipment, normal wear and tear excepted. The Equipment must be returned to the Company in the proper packaging to avoid damage during shipping.

(k) In the event the Company provides Services to non-residents of Canada, Purchaser shall make its best and reasonable effort to accommodate such arrangement, including but not limited to (i) assistance with necessary immigration documentation and processing, and (ii) permitting such non-residents access to the Equipment without undue delay.

7. LIMITATION OF LIABILITY

(a) The Purchaser is relying on its own skill and judgement in relation to the Services supplied under this contract and the Company accepts no liability whatsoever for any representations or statements (oral or written or in any other form, whether or not contained in any correspondence or communications to or from the Company or any of its representatives) which may possess as to the purpose for which the Services are provided.

(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 or extent to which the Equipment will fulfill 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 Company nor any of its agents or representatives makes any representation or warranty 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 6 above shall be the Purchaser's sole remedy under the Terms of Service 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 but not limited to the substitution 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 any direct consequences which result from or in connection with the use and/or operation of Equipment shall be limited to the greater of: (i) the death or bodily injury of any agent, employee, customer, operator, including but not limited to any of the Purchaser's agents or employees; (ii) the death or bodily injury of any agent, employee, customer, operator, including but not limited to any of the Operator's agents or employees; (iii) No security screening equipment is capable of detecting, or that they will detect, all illegal and/or hazardous materials; (iv) the death or bodily injury of any agent, employee, customer, operator, including but not limited to any of the Smiths Detection Proprietary
or hold harmless the Company or its affiliates, in circumstances where the Losses claimed are alleged to have resulted from (i) willful 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.

9. COMPLIANCE WITH APPLICABLE LAW

The Purchaser shall comply with all applicable laws, treaties, regulations and codes of practice, including, without limitation, the laws of Canada, and The Purchaser shall comply with all applicable laws, treaties, regulations and codes of practice including, without limitation, the laws of Canada, and the Purchaser 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.

10. EXPORT AND IMPORT CONTROLS

(a) In the case of exports direct to Purchaser’s designated location, 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. 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 and in any case 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 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 deliver 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.

11. 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, service marks, registered designs or any other intellectual property rights in respect of the Equipment or Services, the Purchaser will make no admission in respect thereof and shall indemnify the Company 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 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 10.

12. SUB-CONTRACTS

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

13. 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.

14. 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 Services, updates, repairs, replacements, fixes, modifications, and other changes to the Equipment shall be 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 agrees to take all reasonable steps to preserve the confidentiality of the confidential information as it uses to protect its own confidential information but not less than reasonable care.

(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.

15. GOVERNING LAW

The Order and these Terms and Conditions of Service shall be governed by and construed in accordance with the laws of Ontario without reference to choice of laws provisions. Any legal action shall be brought in the exclusive venue of the courts of Toronto, Ontario, Canada. 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 national laws of Canada shall be the governing laws, to the extent appropriate, with respect to issues involving patent, copyright, or trademark. The parties to this Agreement have expressly agreed that these Terms and Conditions and any supporting documents be drafted in the English language, terms et conditions ont expression convenu que la presente convention et tout document s’y reportant soient rediges en langue anglaise.

16. CHANGES AND TERMINATION

(a) Company shall have the right, in its sole discretion, to terminate the Service Agreement if the Purchaser:

(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;

(iv) commits any breach of the Service Agreement 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 will cause an increase in the cost of, or, the time required for, the performance of any work under the Service Agreement an equitable adjustment shall be made in the price or delivery schedule, or both, and the Service Agreement 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 not accepted by the Company, and will cause a decrease in the cost of, or, the time required for, the performance of any work under the Service Agreement an equitable adjustment shall be made to The Company for a recoupment of all costs incurred under the Service Agreement and for reasonable profit based on time and costs expended. The Service Agreement 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 Service Agreement.

17. 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, lightning or fire (except if the cause of fire originates from the Equipment), strike or lockout, terrorist and/or insurgent activity, and acts of war, civil unrest, insurrection, civil or political unrest, civil disturbances, civil conflict, or riot. The Company shall not be required to perform any of its obligations under this Agreement arising from any cause beyond its reasonable control except as provided herein. Titled and/or customized 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. If Purchaser agrees to not dispose of, resell, decompose, 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.

18. SOFTWARE

To the extent that the Equipment contain or are software, or that the Services include 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. 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. If Purchaser agrees to not dispose of, resell, decompose, 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.

19. 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 Sections 19(a) to (c).

20. 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 https://www.smiths.com/code.