



QUOTE NO. 2496-128
DATE: MAY 15, 2024

EXPIRATION DATE : July 15, 2024

TO City of Foley
Attention: Jeff Phillips
P.O. Box 1750
200 West Laurel Ave. Suite 255
Foley, AL 36536
251.970.1104
jphillips@cityoffoley.org

RE:
City of Foley Airport

SALESPERSON	JOB	PAYMENT TERMS	DUE DATE
David Organek	2496-128	Prior to Shipment	

QTY	DESCRIPTION	UNIT PRICE	LINE TOTAL
1	CMCE-120 Lightning Suppression Device	\$18,450.00	\$18,450.00
1	Municipality Multi-Project Discount	(\$ 1,295.00)	(\$1,295.00)
1	Inspection-Certification	\$ 1,295.00	\$ 1,295.00
		SUBTOTAL	\$18,450.00
		SHIPPING & HANDLING	TBD
		TOTAL	\$18,450.00

-Final CMCE Device location and installation method to be determined in coordination with owner and connected to existing grounding system to meet manufacturer's requirement of <5 Ohms resistance.

To accept this quotation, sign here and return: _____



CMCE-120 Estimated Coverage Area

TERMS AND CONDITIONS OF SALE

The following Terms and Conditions of Sale ("Terms") govern all sales of EMPD Products to Customer by EMP Defense, LLC ("EMPD"), unless modified in writing by a separate document, signed by EMPD and Customer. The EMPD Products governed by these Terms are:

CMCE-25; CMCE-55; CMCE-120; CMCE-120HR; CMCE120-UL, CMCE-120UL-HR

Orders and Quotations. Any order for EMPD Products ("Order") must be subject to a written purchase order ("PO") from Customer. Any PO becomes an Order only upon acceptance of the PO by EMPD, in its sole and absolute discretion. Prior to placing an Order, Customer may request one or more quotations ("Quotation") from EMPD. Any prices or terms noted in any Quotation are not binding on EMPD, until an Order has occurred. Unless otherwise noted, Quotations are exclusive of applicable taxes, including state and local sales, use, property or other taxes ("Taxes"). Taxes shall be included as part of any Order, payable by Customer, even if not noted in any Quotation.

Shipment and Risk of Loss. All shipments of EMPD Products are F.O.B. EMPD's warehouse, located at 8475 Port Sunlight, Newport, Michigan 48166 ("EMPD Warehouse"). Customer assumes all risk of loss at the EMPD Warehouse and title shall pass at the time. Customer shall be responsible for all freight and shipping charges, including insurance, broker fees, customs charges, duties and other costs ("Shipping Charges"). To the extent Shipping Charges are not included in the Order, Customer shall be solely responsible for their payment, upon demand by EMPD, to the extent paid or to be paid, by EMPD.

Delivery. All EMPD Products shall be subject to the delivery date and terms ("Delivery Date") incorporated into the Order. EMPD shall undertake reasonable efforts to meet the Delivery Date, but shall not be responsible for its failure to do so. EMPD shall not be required to incur additional or expedited shipping charges, in order to meet a Delivery Date. EMPD shall be permitted to ship an Order in one or more deliveries, in the sole and absolute discretion of EMPD. Partial shipments of an Order may be invoiced prior to the complete Order having been shipped.

Installation. The PO shall specify whether the EMPD Product is being installed by Customer ("Customer Installed Product") or by EMPD ("EMPD Installed Product").

A. **Customer Installed Product.** Any Customer Installed Product shall be installed by Customer, its subcontractors or agents, in conformity with the installation specifications established by EMPD and the manufacturer and provided to Customer, including but not limited to, all ground wires and grounding requirements ("Specifications"). EMPD shall inspect each EMPD Installed Product, at Customer's sole cost and expense, to determine if it has been properly installed, in accordance with all Specifications.

B. EMPD Installed Product. Any EMPD Installed Product shall be installed by EMPD or its subcontractors or agents, in conformity the Specifications. If EMPD is to install any EMPD Product, the Order shall so specify and the cost of such installation shall be included in the Order.

Payment. All Orders shall be represented by one or more invoices ("Invoice"). Absent terms to the contrary approved by EMPD, any Invoice shall be due and payable prior to the EMPD Product shipping. All payments shall be made to EMPD at 8745 Port Sunlight, Newport Michigan 48166 in U.S. dollars. Any payment not paid when due will accrue interest at the rate of 1.5% per month, or such lower rate of interest provided by applicable law. EMPD shall be entitled to stop all work under any Order if Customer is in default of its payment obligations to EMPD.

Security Interest. Customer hereby grants to EMPD a purchase money security interest in the EMPD Products, as collateral security for all amounts due to EMPD by Customer. Customer hereby authorizes EMPD to perfect the security interest by filing UCC-1 financing statements or other applicable recordings against Customer and to provide any necessary notifications to other lienholders of record against Customer's assets. Customer also hereby authorizes EMPD to file mechanic's liens and materialmen's liens against any site or vessel upon which any EMPD Products are installed, as collateral security for all amounts due to EMPD by Customer.

Return Policy. All sales are final. Exchanges are accepted only if a manufacturing defect is discovered.

Warranty. All EMPD Products are covered under a year to year ("Warranty Term), not to exceed ten (10) consecutive years ("Warranty Term Expiration") warranty against manufacturer defects ("Warranty"). The Warranty Term shall commence on the Delivery Date and shall renew on the anniversary date of the Delivery Date each year, provided that the EMPD Products have been inspected, at Customer's sole cost and expense, to the satisfaction of EMPD, prior the expiration of a given Warranty Term. EMPD will repair or replace any defective EMPD Product during the Warranty Term, in EMPD's sole and absolute discretion. EMPD shall have the opportunity, but not the obligation, to modify or augment the existing EMPD Product, in order to remedy any warranty breach. In no event shall EMPD's liability for breach of Warranty exceed the purchase price of the EMPD Product. If Customer believes an EMPD Product is defective, Customer must contact EMPD by calling 844-898-2328 or sending an email to info@empdefense.us. EMPD shall investigate and approve any request for Warranty coverage ("Warranty Claim"). Customer shall be responsible for the costs of de-installation and re-installation of any Customer Installed Product subject to an approved Warranty Claim. EMPD shall be responsible for the cost of de-installation and re-installation of any EMPD Installed Product subject to an approved Warranty Claim.

The Warranty shall be invalidated if the EMPD Product subject to the Warranty Claim has been altered or tampered with in any way, including but not limited to, relocation, repositioning, disassembly, modification, painting, covering, sheltering, wrapping or changing the original position, height or mount, of the EMPD Product. The Warranty shall also be invalidated if the EMPD Product subject to the Warranty Claim: (i) has not been installed, handled, or used in accordance with EMPD's Specifications; (ii) has been modified; (iii) has been damaged through misuse, negligence, or abuse of Customer, or the owner or operator of the site or vessel upon which it is installed; (iv) is damaged by causes external to the EMPD Product, including (without limitation) shipping damage, power failure, fire, or accident or catastrophe of any nature; (v) has any seals broken, damaged, or destroyed; or (vi) has been subjected to repairs or attempted repairs by any person other than EMPD or its authorized representatives. Additionally, the ground wires, both above and below ground, related to the EMPD Product shall not have been tampered with, relocated, cut, severed, disconnected, replaced, or otherwise modified or changed from their original location and installation. Any of the foregoing acts set forth in this paragraph shall result in the revocation of the Warranty, as of the moment such act or acts were undertaken, unless Customer has contacted EMPD to re-inspect and re-certify the EMPD Product and EMPD has done so, at Customer's sole cost and expense. Customer shall not permit any third party to inspect, alter or perform any work or services on an EMPD Product or EMPD Product installation or repair, without written authorization from EMPD.

Limitation of Liability. OTHER THAN THE WARRANTY NOTED HEREIN, EMPD MAKES NO OTHER WARRANTY OR GUARANTY AND PROVIDES NO OTHER WARRANTY OR GUARANTY WHATSOEVER, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO AN EMPD PRODUCT OR ITS INSTALLATION, USE, FUNCTION OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER WARRANTY PROVIDED FOR UNDER THE UNIFORM COMMERCIAL CODE OR OTHER APPLICABLE LAW. NO PERSON OR ENTITY AFFILIATED WITH EMPD, INCLUDING BUT NOT LIMITED TO ITS MANAGERS, MEMBERS, OWNERS, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, ATTORNEYS, CONSULTANTS, SUCCESSORS AND/OR ASSIGNS SHALL HAVE ANY LIABILITY WHATSOEVER WITH RESPECT TO THE WARRANTY OR ANY OTHER CLAIM RELATED TO, OR TOUCHING UPON, EMPD PRODUCTS, THEIR INSTALLATION, USAGE, DAMAGE, OTHER CLAIMS, OR OTHERWISE.

Indemnification. Customer shall be responsible for the use, operation, and service (by itself and by its employees, agents, and any other party for whom Customer is responsible) of: (a) the EMPD Products; and (b) any site or vessel that incorporates any EMPD Product. If a third party sustains any damage or loss of any nature, whatsoever, whether business or

economic, and whether based on a loss of property, bodily injury, sickness, disease, death or otherwise ("TP Damages"), that the third party attributes to an EMPD Product or installation, then Customer shall, to the fullest extent allowed by applicable law, indemnify and hold harmless EMPD, its managers, members, owners, officers, directors, employees, agents, attorneys, consultants, successors and assigns from and against any claim by such third party for such TP Damages. The above indemnity shall be equally applicable if Customer (a) resells or distributes any EMPD Product; (b) sells, assigns, or leases any site or vessel that incorporates any EMPD Product or installation; or (c) otherwise transfers EMPD Products or installation to a third party, and (i) EMPD has not re-certified the EMPD Products and installation; and (ii) the third party sustains any TP Damages. Customer's indemnity obligation stated in this paragraph shall not apply if the TP Damages were caused solely and exclusively by EMPD.

Confidential Materials and Ownership. EMPD shall retain exclusive ownership of all reports, Specifications, designs, proprietary materials and any other intellectual property created by EMPD in the course of providing EMPD Products, installations or other services, to Customer ("Proprietary Materials"). EMPD grants Customer a nonexclusive license to use the Proprietary Materials only with respect to the evaluation, use and maintenance of the EMPD Products. Customer agrees that it shall not reverse engineer or disassemble EMPD Products nor shall Customer develop schematics, drawings or designs of EMPD Products. Customer shall not reproduce or disseminate Proprietary Materials other than to employees and agents who have a need to access the same in order to oversee the operation and maintenance of EMPD Products and installations.

Customer agrees that all Proprietary Materials, together with (a) all ideas, designs, specifications, concepts, and inventions made or developed by EMPD; (b) other trade secrets or confidential or proprietary information shared by EMPD with Customer; and (c) these Terms, shall constitute "Confidential Information." Customer shall maintain all Confidential Information as confidential, in the same manner that Customer protects its own or similar confidential information (but in no event less than using a careful degree of care) and shall not disclose Confidential Information to any third party. All Confidential Information shall be returned by Customer to EMPD upon completion of the parties' relationship. This restriction on disclosure shall survive the expiration of the parties' relationship.

The parties agree that a breach of this section may cause immediate and irreparable harm for which monetary damages would be an inadequate remedy and therefore, the parties agree that in addition to any other remedies available at law or hereunder, EMPD shall be entitled to seek equitable relief, including injunctive relief, from any court having jurisdiction, to protect its rights and interests pursuant to this section.

Force Majeure. EMPD's duties and responsibilities under these Terms shall be excused upon an event of *force majeure*, which shall include, but not be limited to, pandemic, inability to obtain necessary materials and components; strikes, labor disturbances, and other unavailability of workers; fire, flood, and other acts of God; war, pandemic, domestic or international terrorism, riot, civil insurrection, and other disturbances; production or engineering difficulties; and governmental regulation, orders, directives, and restrictions.

Disputes. Neither EMPD nor Customer may assert any claim or cause of action with respect to these Terms, after one year from the date the claim or cause of action arose. Any claim or cause of action (whether in contract, tort, or otherwise, including statutory, consumer protection, common law, intentional tort and equitable claims) between Customer and EMPD, arising or relating to these Terms, their interpretation or their breach, termination or validity ("Dispute") shall be governed by, and construed in accordance with, the laws of the State of Michigan without giving effect to the conflicts of law provisions thereof. Venue of any Dispute shall rest solely in the state or federal courts located in the County of Monroe, State of Michigan. Customer and EMPD agree to submit to the personal jurisdiction of such state and federal courts of Michigan and shall be deemed to have waived any and all objections to the exercise of jurisdiction over the parties by such courts and to venue in such court. Unless expressly agreed to the contrary herein or in writing by the parties, no party shall be entitled to recover its reasonable attorneys' fees and costs, including the costs of experts, from the other party, other than EMPD, which shall be entitled to attorney's fees and other costs for any action (including, but not limited to initiating litigation) necessary to collect on: (a) any unpaid balanced owed by Customer to EMPD; or (b) any invoice for products or services ordered by Customer and changed or cancelled without the consent of EMPD.

General Terms. Any notice to be given to EMPD required to be in writing and not sent pursuant to email as stated herein shall be sent by postage prepaid first-class mail or by overnight courier to EMP Defense, LLC, c/o David Organek, 8475 Port Sunlight, Newport, MI 48166. Customer may not assign its obligations to EMPD to any third party, absent the consent of EMPD. No oral representation or statement of EMPD or its agents, employees, officers, directors, members or consultants shall be binding, to the extent it is inconsistent with, or otherwise contradicts, the Terms. To the extent the Terms conflict with any term or provision of a PO or other document, the Terms shall control, unless specifically noted and identified as an exception in the PO or other document. EMPD reserves the right to update the Terms at any time.