



**Equipment Proposal**

**Proposal # 1160**

This Equipment Proposal (the “Proposal”) has been prepared by Ten-8 Fire & Safety, LLC (“Company”) in response to the undersigned Customer’s request for a proposal. This Proposal is comprised of the special terms set forth below, the Proposal Option List, Warranty, and Company’s Purchasing Terms and Conditions. Through its signature below or other Acceptance (as defined below), Customer acknowledges having received, read and being bound by this Proposal, all attachments and Company’s Purchasing Terms and Conditions.

**Date: September 1, 2023**

**Customer: City of Key West Fire Department**

**Customer Address: 1600 N. Roosevelt Blvd Key West, FL 33040**

Qty	Product Description & Options	Price
1	<b>Pierce Impel 7010 PUC Pumper</b>  <b>Purchase based on utilizing Florida Sheriff's Contract FSA23-VEF17.0 Spec 1125 plus customer added options.</b>	<b>\$1,055,604.92</b>
1	<b>Prepay Discount including 100% Performance Bond. Payment due within 30 days of booking.</b>	<b>(\$116,154.92)</b>
<b>** Pricing is subject to change as follows:</b> (a) Commercial chassis price is an estimate; final chassis price will be determined when chassis is delivered by the manufacturer to the original equipment manufacturer (“OEM”). The OEM will notify Company of its final price, and Company will notify Customer of the final price. (b) Persistent Inflationary Environment: If the Producer Price Index of Components for Manufacturing [www.bls.gov Series ID: WPUID6112] (“PPI”) has increased at a compounded annual growth rate of 5.0% or more between the month the OEM accepts this order (“Order Month”) and a month 14 months prior to the then predicted “ready for pick up” date (“Evaluation Month”), then Company may update the pricing in an amount equal to the increase in PPI over 5.0% in each year or fractional year between the Order Month and the Evaluation Month. Company will document any such updated price for Customer’s approval, and Company will provide to Customer the option to cancel this Order for 45 days if Customer does not accept the updated price. If Customer accepts or fails to respond within such 45 day period, Customer will be obligated to complete the Product purchase at the updated Total price.		<b>Total:</b> <b>\$939,450.00</b>

**Delivery Timing:** The Product described above in the Product Description and Options Section of this document will be built by and shipped from the manufacturer approximately 36 (months) after Company receives Customer’s acceptance of this Proposal as defined below, subject to market and production conditions, Force Majeure, delays from the chassis manufacturer, changes to Order Specifications, or any other circumstances or cause beyond Company’s or manufacturer’s control.

**Other:** \_\_\_\_\_

Unless accepted within 30 days from date of proposal, the right is reserved to withdraw this proposal.

*Order continues on immediately following page.*

ACCEPTANCE OF THIS PROPOSAL CREATES AN ENFORCEABLE BINDING AGREEMENT BETWEEN COMPANY AND CUSTOMER. "ACCEPTANCE" MEANS THAT CUSTOMER DELIVERS TO COMPANY: (A) A PROPOSAL SIGNED BY AN AUTHORIZED REPRESENTATIVE, OR (B) A PURCHASE ORDER INCORPORATING THIS PROPOSAL, WHICH IS DULY APPROVED, TO THE EXTENT APPLICABLE, BY CUSTOMER'S GOVERNING BOARD. ACCEPTANCE OF THIS PROPOSAL IS EXPRESSLY LIMITED TO THE TERMS CONTAINED IN THIS PROPOSAL AND COMPANY'S PURCHASING TERMS AND CONDITIONS. ANY ADDITIONAL OR DIFFERENT TERMS, WHETHER CONTAINED IN CUSTOMER'S FORMS OR OTHERWISE PRESENTED BY CUSTOMER AT ANY TIME, ARE HEREBY REJECTED.

**INTENDING TO CREATE A BINDING AGREEMENT**, Customer and Company have each caused this Proposal to be executed by their duly authorized representatives as of date of the last signature below.

**Customer:**

**Ten-8 Fire & Safety, LLC**

By:

By: *Jeff Calcutt*

Title: **Authorized Sales Representative**

Title:

Print: **Jeff Calcutt**

Print:

Date: **9/1/2023**

Date:

*RR*

EXHIBIT A

**PROPOSAL OPTION LIST**

EXHIBIT B  
WARRANTY

EXHIBIT C

**PURCHASING TERMS AND CONDITIONS**

## PURCHASING TERMS AND CONDITIONS

These Purchasing Terms and Conditions, together with the Equipment Proposal and all attachments (collectively, the "Agreement") are entered into by and between Ten-8 Fire & Safety, LLC, a Florida company ("Company") and Customer (as defined in Ten-8 Fire & Safety LLC's Equipment Proposal document) and is effective as of the date specified in Section 3 of these Purchasing Terms and Conditions. Both Company and Customer may be referred throughout this document individually as a "party" or collectively as the "parties."

1. Definitions.

- a. **"Acceptance"** has the same meaning set forth in Company's Equipment Proposal.
- b. **"Company's Equipment Proposal"** means the Equipment Proposal provided by Company and prepared in response to Customer's request for proposal for a fire apparatus or associated equipment.
- c. **"Cooperative Purchasing Contract"** means an Agreement between Company and a public authority, including without limitation, a department, division, agency of a municipal, county or state government ("Public Authority"), that adopts or participates in an existing agreement between Company and another non-party customer (including, but not limited to such non-party customer's equipment proposal, its applicable exhibits, attachments and purchasing terms and conditions), often referred to as a "piggyback arrangement," which is expressly agreed to, in writing, by Company. Company has sole discretion to determine whether it will agree to such a Cooperative Purchasing Contract.
- d. **"Delivery"** means when Company delivers physical possession of the Product to Customer.
- e. **"Manufacturer"** means the Manufacturer of any Product.
- f. **"Prepayment Discount"** means the prepayment discounts, if any, specified in Company's Equipment Proposal.
- g. **"Product"** means the fire apparatus and any associated equipment manufactured or furnished for Customer by Company pursuant to the Specifications.
- h. **"Purchase Price"** means the Total price set forth in the Quotation, after applicable pricing adjustments set forth in the Quotation.
- i. **"Purchasing Terms and Conditions"** means these Purchasing Terms and Conditions; however, if the Company's Equipment Proposal or the Customer's related Purchase Order states that it is governed by a Cooperative Purchasing Agreement, "Purchasing Terms and Conditions" shall mean those terms and conditions set forth in the applicable Cooperative Purchasing Agreement.
- j. **"Specifications"** means the general specifications, technical specifications, training, and testing requirements for the Product contained in Company's Equipment Proposal and its Exhibit A (Proposal Option List), prepared in response to Customer's request for such a proposal.

2. Purpose. This Agreement sets forth the terms and conditions of Company's sale of the Product to Customer.

3. Term of Agreement. This Agreement will become effective on the date of Acceptance as defined in Company's Equipment Proposal ("Effective Date") and, unless earlier terminated pursuant to the terms of this Agreement, it will terminate upon Delivery and payment in full of the Purchase Price.

4. Purchase and Payment. Customer agrees to pay Company the Purchase Price for the Product(s). The Purchase Price is in U.S. dollars. Where Customer opts for a Prepayment Discount that specifies that Customer will tender one or more prepayments to Company, Customer must provide each prepayment within the time frame specified in the Equipment Proposal in order to receive the Prepayment Discount for that prepayment installment. To the extent permitted by applicable law, Company may in its sole discretion charge a convenience fee if Customer elects to pay the Purchase Price by means of a credit card.

5. Representations and Warranties. Customer hereby represents and warrants to Company that the purchase of the Product(s) has been approved by Customer in accordance with applicable general laws and, as applicable, Customer's charter, ordinances and other governing documents, and funding for the purchase has been duly budgeted and appropriated.

6. Cancellation/Termination. In the event this Agreement is cancelled or terminated by Customer before completion, Company may charge Customer a cancellation fee. The following charge schedule is based on costs incurred by

Manufacturer and Company for the Product, which may be applied and charged to Customer: (a) 12% of the Purchase Price after the order for the Product(s) is accepted and entered into Manufacturer's system by Company; (b) 22% of the Purchase Price after completion of approval drawings by Customer, and; (c) 32% of the Purchase Price upon any material requisition made by the Manufacturer for the Product. The cancellation fee will increase in excess of (c) in this Section 6, accordingly, as additional costs are incurred by Manufacturer and Company as the order progresses through engineering and into the manufacturing process.

7. Delivery. The Product is scheduled to be delivered as specified in the Delivery Timing section of the Equipment Proposal ("Delivery Timing"), which will be F.O.B. Company's facility. The Delivery Timing is an estimate, and Company is not bound to such date unless it otherwise agrees in writing. Company is not responsible for Delivery delays caused by or as the result of actions, omissions or conduct of the Manufacturer, its employees, affiliates, suppliers, contractors, and carriers. All right, title and interest in and to the Product, and risk of loss, shall pass to Customer upon Delivery of the Product(s) to Customer.
8. Standard Warranty. The manufacturer warranties applicable to this Agreement, if any, are attached to Company's Equipment Proposal as Exhibit A and are incorporated herein as part of the Agreement.
  - a. Disclaimer. EXCEPT AS OTHERWISE SET FORTH IN THIS AGREEMENT, COMPANY, INCLUDING ITS PARENT COMPANY, AFFILIATES, SUBSIDIARIES, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, SHAREHOLDERS, AGENTS OR REPRESENTATIVES DO NOT MAKE ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE PRODUCTS PROVIDED UNDER THIS AGREEMENT, WHETHER ORAL OR WRITTEN, EXPRESS, IMPLIED OR STATUTORY. WITHOUT LIMITING THE FOREGOING DISCLAIMER, ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, IMPLIED WARRANTY AGAINST INFRINGEMENT, AND IMPLIED WARRANTY OR CONDITION OF FITNESS FOR A PARTICULAR PURPOSE ARE EXPRESSLY EXCLUDED AND DISCLAIMED. STATEMENTS MADE BY SALES REPRESENTATIVES OR IN PROMOTIONAL MATERIALS DO NOT CONSTITUTE WARRANTIES.
9. Limitation of Liability. COMPANY WILL NOT BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, ECONOMIC, PUNITIVE, SPECIAL OR EXEMPLARY DAMAGES ARISING FROM OR IN ANY WAY CONNECTED WITH THIS AGREEMENT WITHOUT REGARD TO THE NATURE OF THE CLAIM OR THE UNDERLYING THEORY OR CAUSE OF ACTION (WHETHER IN CONTRACT, TORT, STRICT LIABILITY, EQUITY OR ANY OTHER THEORY OF LAW) ON WHICH SUCH DAMAGES ARE BASED. COMPANY'S LIMIT OF LIABILITY UNDER THIS AGREEMENT SHALL BE CAPPED AT THE TOTAL AMOUNT OF THE MONIES PAID BY CUSTOMER TO COMPANY UNDER THIS AGREEMENT.
10. Force Majeure. Company shall not be responsible nor deemed to be in default on account of delays in performance due to causes which are beyond Company's control or which make Company's performance impracticable, including but not limited to wars, insurrections, strikes, riots, fires, storms, floods, other acts of nature, explosions, earthquakes, accidents, transportation or delivery delays or losses outside of Company's control, any act of government, inability or delay of Company or manufacture in obtaining necessary labor or adequate or suitable manufacturing components at reasonable prices, allocation regulations or orders affecting materials, equipment, facilities or completed products, failure to obtain any required license or certificates, acts of God or the public enemy, terrorism, epidemics, quarantine restrictions, failure of vendors to perform their contracts or labor troubles of Company or a manufacturer causing cessation, slowdown, or interruption of work.
11. Customer's Obligations. Customer shall provide its timely and best efforts to cooperate with Company and Manufacturer during the manufacturing process to create the Product. Reasonable and timely cooperation includes, without limitation, Customer's providing timely information in response to a request from Manufacturer or Company and Customer's participation in traveling to Manufacturer's facility for inspections and approval of the Product.
12. Default. The occurrence of one or more of the following shall constitute a default under this Agreement: (a) Customer's failure to pay any amounts due under this Agreement or Customer's failure to perform any of its obligations under this Agreement; (b) Company's failure to perform any of its obligations under this Agreement;

(c) either party becoming insolvent or becoming subject to bankruptcy or insolvency proceedings; (d) any representation made by either party to induce the other to enter into this Agreement, which is false in any material respect; (e) an action by Customer to dissolve, merge, consolidate or transfer a substantial portion of its property to another entity; or (f) a default or breach by Customer under any other contract or agreement with Company.

13. Manufacturer's Statement of Origin. Company shall retain possession of the manufacturer's statement of origin ("MSO") for the Product until the entire Purchase Price has been paid. If more than one Product is covered by this Agreement, Company shall retain the MSO for each individual Product until the Purchase Price for that Product has been paid in full.
14. Arbitration. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The Arbitration shall take place in Bradenton, Florida.
15. Miscellaneous. The relationship of the parties established under this Agreement is that of independent contractors and neither party is a partner, employee, agent, or joint venture of or with the other. Neither party may assign its rights and obligations under this Agreement without the prior written approval of the other party. This Agreement and all transactions between Ten-8 Fire & Safety, LLC will be governed by and construed in accordance with the laws of the State of Florida. The delivery of signatures to this Agreement may be via facsimile transmission or other electronic means and shall be binding as original signatures. This Agreement shall constitute the entire agreement and supersede any prior agreement between the parties concerning the subject matter of this Agreement. This Agreement may only be modified by an amendment, in writing, signed by duly authorized representatives of both parties with authority to sign such amendments to this Agreement. In the event of a conflict between the Ten-8 Proposal and these Terms and Conditions, the Ten-8 Proposal shall control except in the case of a Cooperative Purchasing Contract as set forth in Section 1(c) and (i) of these Purchasing Terms and Conditions. If any term of this Agreement is determined to be invalid or unenforceable by a competent legal authority, such term will be either reformed or deleted, as the case may be, but only to the extent necessary to comply with the applicable law, regulation, order or rule, and the remaining provisions of the Agreement will remain in full force and effect.

*Seller shall release the Apparatus to Ten-8 Fire & Safety LLC on or before 11/1/2023. All ground ladders, discharge caps, intake plugs, generators (permanently mounted and portable), cascade systems and cascade bottles, and permanently mounted items such as light towers, shall remain with the Apparatus and shall be released to Ten-8 Fire & Safety LLC.; The apparatus tires shall not be older than 7 years, and shall have a minimum tread depth of 4/32 on steering axles, 2/32 on non-steering axles, and no punctures, cuts to the cord, bulges or sidewall separation.*

*Seller shall provide a pump test certificate for the Apparatus dated within 90 days prior to the release date with results satisfactory to Ten-8 Fire & Safety LLC, including proper operation of the pressure governor, relief valve, primer, and foam system if applicable.*

*Seller shall provide an aerial test certificate for the Apparatus dated within 90 days prior to the release date with results satisfactory to Ten-8 Fire & Safety LLC. Seller represents and warrants that the description, condition, and specifications of the Apparatus provided to Ten-8 Fire & Safety LLC are true and correct. Any Apparatus with a light tower must be fully functional unless other provisions are agreed upon with Ten-8 Fire & Safety LLC.*

*Seller represents and warrants that all prior damage of any type (including but not limited to collision, fire, and flood) has been disclosed to Ten-8 Fire & Safety LLC prior to Seller's acceptance of this offer. Seller shall immediately disclose to Ten-8 Fire & Safety LLC any damage to the Apparatus occurring after Seller's acceptance of this offer. In the event of such damage, at Ten-8 Fire & Safety LLC's option the purchase price of the Apparatus shall be adjusted downward to account for such damage and Seller and Ten-8 Fire & Safety LLC shall negotiate in good faith to determine the amount of such purchase price adjustment.*

*Prior to payment of the purchase price by Ten-8 Fire & Safety LLC, Seller shall provide Ten-8 Fire & Safety LLC with a copy of the title (or in the circumstance set forth below the manufacturer's statement of origin or certificate of origin ("MSO or MCO") of the Apparatus reflecting the Seller as the owner of the Apparatus. Seller represents and warrants that the Apparatus will be sold to Ten-8 Fire & Safety LLC free and clear of any liens or other encumbrances. Seller shall deliver the vehicle title for the Apparatus, free of all liens, to Ten-8 Fire & Safety LLC within ten (10) days after final payment by Ten-8 Fire & Safety LLC. An MSO or MCO is acceptable only from original vehicle manufacturer and is not considered as proof of ownership from the Seller except when the state in which the purchaser is located does not require registration or title on emergency vehicles and a copy of that state's current law or statute clearly stating the exemption is provided by Seller with the MSO or MCO.*

*The apparatus must be completely drained of water and foam prior to shipment or being stored outside prior to shipment. To effectively drain the truck of water, remove all caps and plugs (store on the truck in a compartment), open all intake/discharge valves halfway, and open all drain valves to include the pump cooler and auxiliary cooler. Failure to drain all water from the truck prior to shipment could result in damage to the fire apparatus and corresponding repairs will be performed at the expense of the seller. Any foam agent left on the apparatus will be properly removed and disposed of according to current safety and environmental standards at the expense of the seller.*

*Ten-8 Fire & Safety LLC's obligation to purchase the Apparatus is contingent upon Seller's representations and warranties hereunder being true and correct and Seller's performance of its obligations hereunder. In the event Seller's representations and warranties hereunder are not true and correct or Seller does not perform its obligations hereunder, at Ten-8 Fire & Safety LLC's option the purchase price of the Apparatus shall be adjusted downward to account for such matters and Seller and Ten-8 Fire & Safety LLC shall negotiate in good faith to determine the amount of such purchase price adjustment. Ten-8 Fire & Safety LLC's remedies set forth herein are in addition to any and all other rights and remedies that may be available to Ten-8 Fire & Safety LLC at law, at equity or otherwise.*

*This offer shall be governed by, construed, and enforced in accordance with the laws of Florida. The undersigned by execution and delivery of this Agreement do hereby submit to the exclusive jurisdiction and venue of the state and federal courts of Manatee County, Florida.*