



## **SPECIAL TERMS AND CONDITIONS OF SALE**

### **EFJohnson Quote 1099**

E.F. Johnson Company (“Seller” or “EFJohnson”), hereby offers to sell to the City of Billings, Montana (“Purchaser”) the products and services (“Products”) described at the prices indicated on the aforementioned quote, subject to the special terms and conditions (“Terms”) set forth below. Seller’s quotation is expressly subject to these special terms and conditions that must be acknowledged in writing by Purchaser. Seller hereby refuses inclusion of any terms proposed or provided by Purchaser with its purchase order (“Purchase Order”), and Seller’s delivery of the Products shall not constitute an assent to any such terms.

1. Purchaser agrees to purchase the Products listed on the face side hereof at the price specified thereon. Purchaser’s order for Seller’s standard Products is firm and cannot be cancelled or changed prior to shipment unless Purchaser pays Seller’s restocking fee of twenty-five percent (25%). Purchaser’s order for custom Products cannot be changed or cancelled unless Purchaser reimburses Seller for all unrecovered costs incurred by Seller through the date Seller receives notice of Purchaser’s cancellation plus twenty percent (20%) of such unrecovered costs. No cancellations will be accepted after shipment for any reason.

2. Partial shipment and partial performance are authorized by Purchaser. Seller will issue invoices to Purchaser for all Products as they are shipped or performed. Payment shall be made thirty (30) days from the date of the invoice. The purchase price does not include sales, use, excise or similar taxes, custom duties, or transfer fees, all of which shall be Purchaser’s responsibility. Such taxes and fees, if paid by Seller, shall be charged to Purchaser. Purchaser agrees to pay to Seller interest at the rate of one and one half percent (1½%) per month on all amounts past due until payment is made. Failure to make payments when due shall give Seller the right to refuse to fill any unshipped orders, to stop any shipment in transit, and to exercise any other rights it may have as a Seller. Purchaser agrees to pay Seller all reasonable expenses, including but not limited to attorney’s fees, of collection of accounts past due. Letters of Credit or wire payments are required in advance of shipment. If, in Seller’s judgment, the financial condition of Purchaser at any time prior to receipt of Products by Purchaser, does not justify continuance of the work or shipment of the Products, Seller may, at its option, require full or partial payment in advance, or may cancel an order or any part thereof.

3. All shipments shall be made FOB Seller’s final place of Product manufacture at which time Seller’s obligations terminate hereunder, and delivery for shipment to a carrier at the FOB point shall constitute delivery thereof by Seller to Purchaser. All Products are shipped at Purchaser’s risk, and Seller shall incur no liability for Products damaged, broken or lost in transit. If shipping instructions are not provided by Purchaser to Seller, Seller may pack and ship the products in such a manner as Seller shall determine without incurring any obligation or liability to Purchaser on account of the manner in which Seller causes same to be packed or shipped.

4. Purchaser agrees and acknowledges that it shall follow the ordering option upgrades instructions attached hereto as Exhibit A to the special terms and conditions when placing its Purchase Order for same. The option upgrade instructions are attached hereto as Exhibit B, and Purchaser hereby acknowledges receipt of same. Purchaser and Seller agree and acknowledge that Purchaser is solely responsible for performing the software upgrades, and Seller has neither responsibility nor liability for same.

5. Products sold hereunder are licensed in accordance with the Software License Agreement attached hereto as Exhibit C to the Special Terms and Conditions. SELLER MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE TOTAL LIABILITY OF SELLER ON ANY AND ALL CLAIMS, WHETHER BASED ON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE OR PATENT INFRINGEMENT) OR OTHERWISE, ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM THE PERFORMANCE OR NON-PERFORMANCE OF ANY AGREEMENT RESULTING HEREFROM OR FROM THE MANUFACTURE, SALE, DELIVERY, RESALE, REPAIR, REPLACEMENT OR USE OF ANY PRODUCTS OR FURNISHING OF ANY SERVICE SHALL NOT EXCEED THE PRICE ALLOCABLE TO THE PRODUCTS WHICH GIVES RISE TO THE CLAIM. EXCEPT AS TO TITLE, ANY SUCH LIABILITY SHALL TERMINATE UPON THE EXPIRATION OF THE APPLICABLE WARRANTY PERIOD THEREOF. IN NO EVENT, WHETHER AS A RESULT OF

BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE OR PATENT INFRINGEMENT) OR OTHERWISE, SHALL SELLER BE LIABLE FOR PERSONAL INJURY OR LOSS, PROPERTY DAMAGE, OR EXPENSE ARISING FROM THE USE OF SELLER'S PRODUCTS OR FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, INDIRECT OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED, TO LOSS OF PROFIT OR REVENUES, LOSS OF THE USE OF THE PRODUCTS OR ANY ASSOCIATED PRODUCTS, COST OF CAPITAL, COST OF SUBSTITUTE GOODS, FACILITIES, SERVICES OR REPLACEMENT POWER, DOWNTIME COSTS OR CLAIMS OF THE PURCHASER'S CUSTOMERS FOR SUCH DAMAGES.

6. Seller makes no representations concerning coverage or the distance at which usable radio signals will be transmitted and received by the Products supplied hereunder. Radio systems are subject to degradation of service from natural phenomenon and other causes beyond the reasonable control of Seller. Seller is not responsible for interference or disruption of service caused by operation of other radio systems, by natural phenomenon, or other interference over which there is no reasonable control.

7. Seller warrants that Seller manufactured Products furnished hereunder and any part thereof, shall be delivered free of rightful claim of any third party for infringement of any United States patent. If notified promptly in writing and given authority, information and assistance, Seller, at its expense, shall defend, or may settle, any suit or proceeding against Purchaser if based on a claimed infringement which breaches this warranty. In case any such Product or any part thereof is held to constitute such an infringement and the use of said Product or part is enjoined, Seller, at its expense and option, shall either procure for Purchaser the right to continue using said Product or part, or replace same with a non-infringing Product, or modify same so it becomes non-infringing, or remove said Product and refund the purchase price (less reasonable depreciation for use and any transportation costs separately paid by Purchaser). The foregoing states the entire liability of Seller for patent infringement by such Product or any part thereof, and is subject to the limitation of liability set forth in Paragraph 5 above. The preceding shall not apply to any Product or parts manufactured to Purchaser's design, modified by Purchaser, or to the use of any Product or part furnished hereunder in conjunction with any other equipment in a combination not furnished by Seller as a part of this transaction. As to any such Product, part, or use or combination, Seller assumes no liability whatsoever for patent infringement.

8. Seller reserves the right at any time to discontinue any Product and to make changes or improvements in specifications or design in such Products without incurring any obligations to Purchaser with respect to the past or future sale of such Products.

9. Prices and delivery dates apply only if this offer is accepted by Purchaser via both: (i) placement of a valid Purchase Order with all instructions for ordering satisfied by Purchaser; and (ii) Purchaser's written acknowledgement to Seller of the special terms and conditions herein on or before June 15, 2012 (the "Validity Period"). This offer expires upon the expiration of this Validity Period.

10. Purchaser may inspect the Products and/or confirm the quantity of the Product upon delivery. If special or source inspection is required, man hours necessary for Seller to assist in the performance of it are chargeable at the Seller's inspection rate. Claims for defective or incorrect parts, or shortages, must be reported to Seller in writing within two (2) weeks after Purchaser's receipt of the Products. Failure to make such a claim within the time specified shall relieve Seller of all responsibility therefore. **NO RETURNS ARE ALLOWED WITHOUT PRIOR WRITTEN AUTHORIZATION OF SELLER.** In the absence of such prior authorization, Seller assumes no responsibility for returned Products nor does it agree to grant a credit therefore. Products are to be returned in accordance with Seller's then current return policy.

11. Purchaser is solely responsible for obtaining and complying with any necessary permits and licenses for the Federal Communications Commission (FCC) or any other Federal, State or local government authority, related to the purchase, installation, construction or operation of any Products purchase hereunder. Seller will assist Purchaser with the details necessary to complete frequency coordination and FCC licensing forms. Purchaser shall be responsible for all FCC application fees and frequency coordination fees.

12. Purchaser agrees that it will comply with all U.S. and/or applicable export laws and that it will not directly or indirectly export, re-export, resell, ship, or divert any product or technical data or software furnished hereunder to any country for which the U.S., at the time of export, requires an export license or other governmental approval without first obtaining such license or approval.

13. Seller shall not be liable for delays in delivery or performance or for failure to manufacture, deliver, or perform due to (i) acts of God, acts of civil or military authority, governmental priorities, supplier shortages, strikes or other labor disturbances, floods, epidemics, war, riots, or delays in transportation; or (ii) causes beyond the reasonable control of Seller or its suppliers, including inability to obtain necessary material components, services or facilities. In the event of any such delay, the date of delivery or performance shall be extended for a period equal to the time lost by reason of such delay.

14. These special terms and conditions shall be construed in accordance with the State of Montana without regard to its choice of law provisions.

15. These special terms and conditions constitute the entire understanding between the Purchaser and the Seller concerning the subject hereof, any representation, promise, understanding, proposal, agreement, warranty, course of dealing or trade usage not expressly contained or referenced herein shall not be binding on Seller. No modification, amendment, rescission, waiver, or other change shall be binding on Seller unless agreed in writing by Seller. SELLER DOES NOT ASSUME ANY OBLIGATIONS OR LIABILITIES IN CONNECTION WITH THE SALE OF ITS PRODUCTS OTHER THAN THOSE EXPRESSLY STATED IN THESE SPECIAL TERMS, AND DOES NOT AUTHORIZE ANY PERSON (INCLUDING, BUT NOT LIMITED TO, SELLER'S DIRECT SALES FORCE AND SALES AGENTS) TO ASSUME FOR SELLER ANY OTHER OBLIGATIONS OR LIABILITIES.

Purchaser hereby accepts and acknowledges the special terms and conditions set forth herein, and any Purchase Order placed by Purchaser pursuant to Quote 1099 issued by Seller shall be in accordance with same.

City of Billings, Montana

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Signature

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Print Name

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Title

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Date

EXHIBIT A

EXHIBIT B

EXHIBIT C