

# ATLANTIC

## EMERGENCY SOLUTIONS

This Purchase Agreement (together with all attachments referenced herein, the "Agreement"), made and entered into by and between Atlantic Emergency Solution's Inc., a Virginia corporation ("Atlantic"), and Town of Nags Head ("Customer") is effective as of the date specified in Section 3 hereof.

### 1. Definitions.

- a. **"Product"** means the fire apparatus and any associated equipment manufactured or furnished for the Customer by Atlantic pursuant to the Specifications and Exhibit A.
- b. **"Specifications"** means the general specifications, technical specifications, training, and testing requirements for the Product contained in the Atlantic Proposal for the Product prepared in response to the Customer's request for proposal.
- c. **"Atlantic Proposal"** means the proposal provided by Atlantic attached as Exhibit C prepared in response to the Customer's request for proposal.
- d. **"Delivery"** means the date Atlantic makes physical delivery of the Product to the Customer.
- e. **"Acceptance"** The Customer shall have fifteen (15) calendar days of Delivery to inspect the Product for conformance with the Specifications; unless Atlantic receives a Notice of Defect within fifteen (15) calendar days of Delivery, the Product will be deemed to be in conformance with the Specifications and accepted by the Customer; provided, however, that the foregoing shall not apply to latent defects.

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

3. Term of Agreement. This Agreement will become effective on the date it is signed and approved by Atlantic's authorized representative pursuant to Section 22 hereof ("Effective Date") and, unless earlier terminated pursuant to the terms of this Agreement, and except for items which by their nature are continuing after termination of this Agreement (including, but not limited to, warranties and training), it will terminate upon the Customer's Acceptance and payment in full of the Purchase Price.

4. Purchase and Payment. The Customer agrees to purchase the Product for the total purchase price of \$719,998 ("Purchase Price"). Prices are in U.S. funds.

5. Future Changes. Various state or federal regulatory agencies (e.g. NFPA, DOT, EPA) may require changes to the Specifications and/or the Product and in any such event any resulting cost increases incurred to comply therewith will be added to the Purchase Price to be paid by the Customer; however, Atlantic represents that it is aware of no such impending changes. In addition, any future drive train upgrades (engine, transmission, axles, etc.), or any other specification changes have not been calculated into our annual increases and will be provided at additional cost; however, Atlantic represents that it is aware of no such impending changes. To the extent practicable, Atlantic will document and itemize any such price increases for the Customer. Notwithstanding any provisions of this Section 5 to the contrary, any change to the Purchase Price will require a change order signed by all parties to this Agreement.

6. Agreement Changes. The Customer may request that Atlantic incorporate a change to the Products or the Specifications for the Products by delivering a change order to Atlantic; provided, however, that any such change order must be in writing and include a description of the proposed change sufficient to permit Atlantic to evaluate the feasibility of such change ("Change Order"). Within [seven (7) business days] of receipt of a Change Order, Atlantic will inform the Customer in writing of the feasibility of the Change Order, the earliest possible implementation date for the Change Order, of any increase or decrease in the Purchase Price resulting from such Change Order, and of any effect on production scheduling or Delivery resulting from such Change Order. Upon such Change Order becoming effective, the Delivery date for the Product shall be increased or decreased by an amount stated in the Change Order, if any. A Change Order is only effective when counter-signed by Atlantic's and Customer's authorized representative.

7. Cancellation/Termination. In the event this Agreement is cancelled or terminated by Customer without cause attributable to Atlantic before completion, Atlantic may charge a cancellation fee. The following charge schedule based on costs incurred may be applied: (a) 10% of the Purchase Price after order is accepted and entered by Atlantic; (b) 20% of the Purchase Price after completion of approval drawings, and; (c) 30% of the Purchase Price upon any material requisition. The cancellation fee will increase accordingly as costs are incurred in excess of the above amounts as the order progresses through engineering and into manufacturing. Atlantic shall mitigate any such costs through the sale of such Product to another purchaser; however Customer

shall remain liable for the difference between the Purchase Price and, if applicable, the sale price obtained by Atlantic upon sale of the Product to another purchaser, plus any reasonable costs incurred by Atlantic to conduct any such sale.

8. Delivery, Inspection and Acceptance. (a) Delivery. Delivery of the Product is scheduled to be within 9 months of the Effective Date of this Agreement, F.O.B. Customer's location. Risk of loss shall pass to Customer upon Delivery. (b) Inspection and Acceptance. Upon Delivery, Customer shall have fifteen (15) days within which to inspect the Product for conformance to the Specifications, and in the event of non-conformance to the Specifications to furnish Atlantic with written notice sufficient to permit Atlantic to evaluate such non-conformance ("Notice of Defect"). Any Product not in conformance to Specifications shall be remedied by Atlantic within thirty (30) days from the Notice of Defect. In the event Atlantic does not receive a Notice of Defect within fifteen (15) days of Delivery, Product will be deemed to be in conformance with Specifications and Accepted by Customer; provided, however, that the foregoing shall not apply to latent defects.

9. Notice. Any required or permitted notices hereunder must be given in writing at the address of each party set forth below, or to such other address as either party may substitute by written notice to the other in the manner contemplated herein, by one of the following methods: hand delivery; registered, express, or certified mail, return receipt requested, postage prepaid; or nationally-recognized private express courier:

Atlantic Emergency Solutions, Inc.  
Director of Order Management  
12351 Randolph Ridge Lane  
Manassas, Virginia 20109  
Fax (703) 257-2572

Customer  
Town of Nags Head \_\_\_\_\_  
PO Box 99 \_\_\_\_\_  
Nags Head, NC 27959 \_\_\_\_\_  
\_\_\_\_\_

10. Standard Warranty. Any applicable Pierce warranties are attached hereto as Exhibit B and made a part hereof. Any additional warranties must be expressly approved in writing by Atlantic's authorized representative, and Atlantic's authorized representative, by his signature below, hereby expressly approves and incorporates as part of this Agreement all warranties that were included as part of the Specifications.

a. Disclaimer. OTHER THAN AS EXPRESSLY SET FORTH IN THIS AGREEMENT, NEITHER PIERCE, ITS PARENT COMPANY, AFFILIATES, SUBSIDIARIES, LICENSORS OR SUPPLIERS, THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, SHAREHOLDERS, AGENTS OR REPRESENTATIVES, MAKE ANY EXPRESS OR IMPLIED WARRANTIES WITH RESPECT TO THE PRODUCTS PROVIDED HEREUNDER, WHETHER ORAL OR WRITTEN, EXPRESS, IMPLIED OR STATUTORY. WITHOUT LIMITING THE FOREGOING, ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY AND THE 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.

b. Exclusions of Incidental and Consequential Damages. In no event shall Atlantic or Customer be liable for consequential, incidental or punitive damages with any matter arising out of or relating to this Agreement, or the breach thereof, regardless of whether such consequential, incidental or punitive damages arise out of breach of warranty, tort, contract, strict liability, statutory liability, indemnity, whether resulting from non-delivery, non-payment, negligence, or otherwise.

11. Insurance. Pierce maintains the following limits of insurance with a carrier(s) rated A- or better by A.M. Best:

Commercial General Liability Insurance:

Products/Completed Operations Aggregate: \$1,000,000  
Each Occurrence: \$1,000,000

Umbrella/Excess Liability Insurance:

Aggregate: \$25,000,000  
Each Occurrence: \$25,000,000

The Customer may request: (x) Atlantic to provide the Customer with a copy of a current Certificate of Insurance with the coverages listed above; (y) to be included as an additional insured for Commercial General Liability (subject to the terms and conditions of the applicable Atlantic insurance policy); and (z) all policies to provide a 30 day notice of cancellation to the named insured.

12. [reserved]

QSD1398

**"THIS INSTRUMENT HAS BEEN PREAUDITED  
IN THE MANNER REQUIRED BY THE LOCAL  
GOVERNMENT BUDGET & FISCAL CONTROL ACT"**

Revised: 09/10/2010

11-21-12



13. Force Majeure. Atlantic shall not be deemed to be in default on account of delays in performance due to "Force Majeure Events". Force Majeure Events are defined as civil wars, insurrections, strikes, riots, fires, storms, floods, other acts of nature, explosions, earthquakes, accidents, any act of government, acts of God or the public enemy or terrorism, epidemics, quarantine restrictions, failure of vendors (due to causes identical to those within the scope of this clause) to perform their contracts or labor troubles causing cessation, slowdown, or interruption of work, but only to the extent such events are beyond the control of and without fault on the part Atlantic and make Atlantic's performance impracticable. Provided, however, a Force Majeure Event shall not be deemed to have occurred unless Atlantic gives written notice to Customer no later than three (3) days after the occurrence of such Force Majeure Event, with a description of the particulars of the Force Majeure Event, including the estimated duration of said Force Majeure Event or the effect thereof and the probable impact on Atlantic's performance under the Agreement. The effects of said Force Majeure Event shall, so far as possible, be remedied by Atlantic with all reasonable efforts, and Atlantic shall use its best efforts to eliminate and mitigate the consequences thereof. The time for Atlantic's performance may be extended for a period equal to the time such performance is delayed by said Force Majeure Event, but in no event more than sixty (60) days, unless otherwise agreed by Customer in writing. Under no circumstances shall Atlantic be entitled to any additional compensation or damages of any kind or character by virtue of a Force Majeure Event.

14. Default. The occurrence of one or more of the following shall constitute a default under this Agreement: (a) the Customer fails to pay when due any amounts under this Agreement, unless such amounts are reasonable disputed, or to perform any of its obligations under this Agreement; (b) Atlantic fails to perform any of its obligations under this Agreement; (c) either party becomes insolvent or becomes subject to a bankruptcy or insolvency proceedings; (d) any representation made by either party to induce the other to enter into this Agreement is false in any material respect; or (e) either party dissolves, merges, consolidates or transfers a substantial portion of its property to another entity.

15. Manufacturer's Statement of Origin. It is agreed that the manufacturer's statement of origin ("MSO") for the Product covered by this Agreement shall remain in the possession of Atlantic until the entire Purchase Price has been paid. If more than one Product is covered by this Agreement, then the MSO for each individual Product shall remain in the possession of Atlantic until the Purchase Price for that Product has been paid in full.

16. Independent Contractors. The relationship of the parties established under this Agreement is that of independent contractors and neither party is a partner, employee, agent, or joint venturer of or with the other.

17. Assignment. Neither party may assign its rights and obligations under this Agreement unless it has obtained the prior written approval of the other party.

18. Governing Law; Jurisdiction. Without regard to any conflict of laws provisions, this Agreement is to be governed by and under the laws of the state of North Carolina.

19. Facsimile Signatures. The delivery of signatures to this Agreement by facsimile transmission shall be binding as original signatures.

20. Entire Agreement. This Agreement shall be the exclusive agreement between the parties for the Product. Additional or different terms proposed by the Customer shall not be applicable, unless accepted in writing by Atlantic's authorized representative. No change in, modification of, or revision of this Agreement shall be valid unless in writing and signed by Atlantic's authorized representative.

21. Conflict. In the event of a conflict between the Customer Specifications and the Atlantic Proposal, the Atlantic Proposal shall control. In the event there is a conflict between the Atlantic Proposal and this Agreement, the Atlantic Proposal shall control.

22. Signatures. This Agreement is not effective unless and until it is approved, signed and dated by Atlantic Manufacturing, Inc.'s authorized representative.

Accepted and agreed to:

ATLANTIC EMERGENCY SOLUTIONS, INC.

Name: [Signature]

Title: President

Date: 11-26-2012

QSD1398

CUSTOMER: Town of Nags Head

Name: [Signature]

Title: Town Manager

Date: 11-21-12

3

Revised: 09/10/2010



EXHIBIT A

**PURCHASE DETAIL FORM**  
Atlantic Emergency Solutions, Inc.  
Director of Order Management  
12351 Randolph Ridge Lane  
Manassas, Virginia 20109  
Fax (703) 257-2572

Date: November 8, 2012

Customer Name: Town of Nags Head

Quantity	Chassis Type	Body Type	Price per Unit
1	Impel	75' Steel Aerial	\$719,998
			\$
			\$
			\$
			\$

[Insert any trade-in or applicable discounts here.]  
This price is contingent of a chassis pre-pay of \$275,000 within 15 days of the signing of this contract

Warranty Period: Pierce Standard Warranties Per Proposal

Training Requirements: Three days of aerial training provided

Other Matters: Performance Bond shall be issued upon execution of contract

This contract is available for inter-local and other municipal corporations to utilize with the option of adding or deleting any Atlantic available options, including chassis models. Any addition or deletion may affect the unit price.

Payment Terms: \_\_\_\_\_

Final payment due upon delivery and approval of unit

It is mutually agreed by and between the TOWN and SELLER that SELLER will provide the equipment required under this contract no later than September 1, 2013 with time being of the essence. If SELLER fails to meet this deadline, the TOWN will be damaged thereby, and because the amount of the TOWN's damages, inclusive of expenses for inspection, superintendence and necessary traveling expenses is difficult if not impossible to definitely ascertain and prove, it is hereby agreed that the sum of \$500.00 shall be due from SELLER as liquidated damages for every day's delay in furnishing the Equipment beyond the deadline prescribed; and the SELLER hereby agrees that said sum shall be deducted from monies due the SELLER under the contract or, if no money is due to the SELLER, then SELLER hereby agrees to pay to the TOWN as liquidated damages, and not by way of penalty, such total sum as shall be due for such delay computed aforesaid.

[NOTE: If deferred payment arrangements are required, the Customer must make such financial arrangements through a financial institution acceptable to Atlantic.] All taxes, excises and levies that Atlantic may be required to pay or collect by reason of any present or future law or by any governmental authority based upon the sale, purchase, delivery, storage, processing, use, consumption, or transportation of the Product sold by Atlantic to the Customer shall be for the account of the Customer and shall be added to the Purchase Price, but only to the extent that Customer, a tax exempt entity, would be required by law to make such tax payments if Customer was taxed directly. All delivery prices or prices with freight allowance are based upon prevailing freight rates and, in the event of any increase or decrease in such rates, the prices on all unshipped Product will be increased or decreased accordingly. Delinquent payments that are not reasonably disputed shall be subject to a carrying charge of 1.5 percent per month or such lesser amount permitted by law. Atlantic will not be required to accept payment other than as set forth in this Agreement. However, to avoid a late charge assessment in the event of a dispute caused by a nonconformance with Specifications, the Customer may withhold up to five percent (5%) of the Purchase Price until such time that Atlantic substantially remedies the nonconformance with Specifications. If the disputed amount is the freight charge, the Customer may withhold only the amount of the freight charge until the dispute is settled. Atlantic shall have and retain a purchase money security interest in the Product to secure payment of the Purchase Price for the Product.

THIS PURCHASE DETAIL FORM IS EXPRESSLY SUBJECT TO THE PURCHASE AGREEMENT TERMS AND CONDITIONS DATED AS OF NOVEMBER 8, 2012 BETWEEN ATLANTIC EMERGENCY SOLUTIONS INC. AND TOWN OF NAGS HEAD WHICH TERMS AND CONDITIONS ARE HEREBY INCORPORATED IN, AND MADE PART OF, THIS PURCHASE DETAIL FORM

AS THOUGH EACH PROVISION WERE SEPARATELY SET FORTH HEREIN, EXCEPT TO THE EXTENT OTHERWISE STATED OR SUPPLEMENTED HEREIN.

EXHIBIT B  
WARRANTY