



Smith & Loveless, Inc.  
14040 Santa Fe Trail Drive  
Lenexa, Kansas 66215  
913/888-5201

## SALES AGREEMENT

Name and Address:

Quotation Date: March 30, 2017

Inquiry Number: 25320

Job Location: Vero Beach FL

Smith & Loveless, Inc., having an office at 14040 Santa Fe Trail Drive, Lenexa, Kansas 66215 (hereinafter referred to as "Seller"), hereby agrees to sell to the buyer designated below (hereinafter referred to as "Buyer"), the following equipment subject to all of the provisions set forth in this Sales Agreement. *The Sales Representative is not an agent or employee of Seller and is not authorized to enter into any agreement on Seller's behalf or bind Seller in any way.*

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### Replacement for 03-0396W

ONE Smith & Loveless Model 7 PISTA 270<sup>□</sup> GRIT CHAMBER™ mechanism suitable for installation in a concrete structure 10'-0" diameter x 7'-7" deep with a concentric 5'-0" diameter x 5'-6" deep grit well and concrete bridge – concrete structures by others.

The PISTA<sup>□</sup> GRIT CHAMBER™ mechanism shall include a helical gear reducer driven by 1.0 HP, 3/60/460 volt TEFC, premium efficiency pump motor, spur gear final drive head, air bell, propeller, drive tube, removable grit well cover plates. All fabricated steel parts will be 316 stainless steel.

### SPARE PARTS

None

### CORROSION PROTECTION:

All fabricated steel components shall be commercial blasted and prime coated by the Manufacturer with one 3-mil DFT coat of red oxide primer prior to shipment. All motors and gearboxes shall be furnished with the original manufacturer's coating. Final touch up and finish coating shall be the responsibility of the purchasing contractor. The screw conveyor shall be factory finish coated with one 6-mil DFT coat of VERSAPOX<sup>□</sup> epoxy.

Approximate total weight of equipment: 2000

**NOT INCLUDED:**

Control Panel  
Dewatering Equipment  
Concentrator/Hydrocyclone  
Blower or diffusers  
All concrete work  
Field assembly/erection or installation  
Interconnecting piping, wiring and conduit  
Field paint or painting  
Lubricants  
Field testing or grit performance testing  
Grouting  
Airlift  
Anti-siphon valve (required by others)  
PLC Program Copy (if applicable)

Smith & Loveless, Inc. will provide one electronic copy of the O&M on CD in PDF format and four hard copies of the O&M. Additional copies can be provided for \$50 per copy.

**PRICE, SUBMITTAL DATA & DELIVERY:**

\$ 86,924.00 Base Bid

\$ 7,000.00 Deduct for epoxy painted carbon steel fabricated components

F.O.B. factory plus any taxes, which may apply. Truck/Rail freight allowed to the job site, rail siding or nearest unloading area-unloading to be by Buyer. Due to the spike in gas prices, which is beyond the control of Smith & Loveless at the time of our quotation/bid, a fuel surcharge may need to be assessed at time of shipment.

Due to wide fluctuations and increases in the price of stainless and carbon steel components we are experiencing in very short time frames, the sales price of the equipment quoted herein is subject to an escalation in price. Escalation shall be based upon the increase in the Producer Price Index, U.S. Department of Labor, Bureau of Labor Statistics-Group: Machinery and Equipment: Special Industry Machinery and Equipment, Series Id-WPU116 (the "Index"). The escalation shall be calculated based upon the percentage increase of the monthly index between the date of this quotation and the date of shipment of the equipment (i.e. the index for the month of the shipment minus the index for the month of quotation divided by the index for the month of quotation, multiplied by the quoted price). Note there is approximately 2-4 month delay in the publishing and finalizing of these indexes by the Federal Government. Therefore, the escalation will be calculated at the time the index for both months has been published and finalized.

Pricing is firm for 45 days from bid date.

Two (2) days supervision of initial operation, start-up and operator training over one (1) trip is included. If additional days are required, Seller will furnish a factory-trained supervisor for \$925 per day including travel time plus actual travel expenses.

With continuing approval of the Smith & Loveless Credit Department, payments terms are 100% Net 30 days from date of shipment, or at time of start-up, whichever occurs first.

Seller to send Submittal Data for approval 4-6 weeks after receipt of complete details at Seller's factory.

Manufacturing completion is estimated 14-16 weeks after receipt in Seller's office of approved

Submittal Data and/or after all notations or comments have been clarified, approved and inserted into the manufacturing documents by the Seller. Variations in the time Submittal Data is returned to Seller and/or Submittal Data marked approved but which contain contingencies or variations may impact the completion time of the equipment.

#### **ADDITIONAL TERMS AND CONDITIONS**

1. **GENERAL A.** Buyer's execution of this Agreement constitutes Buyer's offer to purchase, on the terms and conditions set forth herein, the equipment described in this agreement, and such offer is irrevocable for thirty (30) days after Buyer executes and delivers to Seller this Agreement together with all necessary engineering data and information. Prices are firm for sixty (60) days after the bid date provided a firm order is received at the factory within that time period and provided approved Submittal Data is received at the factory within forty-five (45) days from the date submittals are forwarded from the factory. In the event firm orders and Submittal Data are not received by Seller within the times set forth above, then price and delivery estimates may change due to changes in the costs of material and labor and/or factory capacity at the time when the firm orders or approved Submittal Data is received by Seller. Seller reserves the right to amend this Sales Agreement if not signed and returned within sixty (60) days from the quotation date. In the event we are unable to ship within estimated period for reasons beyond our control, including a request by the Buyer to defer shipment, the prices are subject to adjustment to those prevailing at the time of shipment, but will not exceed 1-1/2% per month.

**B.** THIS AGREEMENT IS NOT BINDING ON SELLER UNLESS SIGNED ON SELLER'S BEHALF BY AN OFFICER OR MANAGER OF SELLER.

**C.** This Agreement constitutes the entire contract between the parties with respect to said equipment (any prior agreement, representation, covenant or warranty, written or oral, being superseded hereby) and may not be amended or modified except by a written instrument duly executed by both parties, the provisions of any purchase order or other document submitted by or on behalf of Buyer to the contrary notwithstanding.

**D.** All notices hereunder are to be in writing and mailed postage prepaid to the party being notified at the address indicated in this agreement or at such other address as may be designated in writing.

**E.** Remedies provided for herein are cumulative and are in addition to all other remedies as may be available at law or in equity.

**F.** This Agreement is governed by and subject to the laws of the State of Kansas and the Buyer by executing this agreement agrees to submit to the Jurisdiction of the State of Kansas and the venue for any disputes between the parties will be in the District Court of Johnson County, Kansas, or the Federal District Court of Kansas.

2. **NOTICE TO PROCEED-** Return to Seller of approved Submittal Data or notification to Seller that the submission of submittals will be waived, constitutes notice to Seller to proceed with manufacture. In the event Seller does not receive approved Submittal Data within forty-five (45) days after Seller's submission of submittal data for approval, then Seller reserves the right to amend price and delivery of the equipment being sold. Final approved Submittal Data means approval by Buyer (or Buyer's representative) of Seller's Submittal Data and/or after all notations or comments have been clarified, approved and inserted into Seller's manufacturing documents at which point Seller's estimated completion schedule commences. Variations in the time Submittal Data is returned to Seller and/or Submittal Data marked approved but which contain contingencies or variations may impact the completion time of the equipment. Seller agrees to furnish only the equipment included in Seller's quotation and/or as described and modified in the Submittal Data. Approval of the Submittal Data constitutes acceptance of the equipment in the configuration described therein. If Seller is directed to change the scope of the equipment after notice to proceed to manufacture, then Seller reserves the right to amend the price and delivery of the equipment.

3. **EXCUSED PERFORMANCE-** Seller is not liable for any failure or delay in performance hereof, with respect to delivery or otherwise, if such failure or delay is due to any cause beyond Seller's control including, but not limited to, any Act of God, war, civil disturbance, riot, labor difficulty, factory capacity, fire, other casualty, accident or supplier's failure or inability to perform.

4. **CREDIT APPROVAL-** The credit terms specified herein are subject to Seller's continuing approval of Buyer's credit and if, in Seller's sole judgment, Buyer's credit or financial standing is impaired as to cause Seller to deem itself insecure, Seller may withdraw the extension of credit and require other payment terms.

5. **PAYMENT-** Subject only to any credit terms, which Seller may extend, the total purchase price hereunder is due at such time, within or after the estimated shipment period specified herein, as said equipment is ready to be shipped. Buyer shall pay in full all invoices within the time for payment specified therein and Buyer's payment obligation is in no way dependent or contingent upon Buyer's receipt of payment from any other party. Any balance owed by Buyer for thirty (30) days or more after the same becomes due is subject to a 2% per month delinquency charge until paid. In addition to all other amounts due hereunder, Buyer shall reimburse Seller in full for all damages, costs and expenses, including reasonable attorneys' fees, which Seller may incur with respect to Buyer's breach of this Sales Agreement or the collection of past due amounts from Buyer. If Buyer is in default under this or any other agreement with Seller, Seller may, at its option, defer performance hereunder until such default is cured.

6. **SECURITY INTEREST-** Until all amounts due hereunder have been paid in full, Seller has a security interest in said equipment and has all rights of a secured party under the Uniform Commercial Code including, without limitation, the right to take possession of said equipment without legal process and the right to require Buyer to assemble said equipment and make it available to Seller at a place reasonably convenient to both parties. At Seller's request, Buyer shall execute any financing statement or statements submitted by Seller in order that Seller's security interest in said equipment may be perfected.

7. **WARRANTY & LIABILITY-** Seller warrants only that said equipment is free from defects in materials and workmanship as set forth in Seller's standard Certificate of Warranty furnished to Buyer at the time of final shipment. THIS WARRANTY IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE OR DESIGN AND WHICH ARE EXPRESSLY DISCLAIMED BY SELLER. Seller's sole responsibility with respect to any equipment which proves to be defective as to materials or workmanship is either to replace or to repair the same as is set forth in said Certificate of Warranty. Unless authorized in writing by Seller, Seller is not responsible for any charge or expense incurred

for the modification, servicing or adjusting of said equipment after the same has been delivered to Buyer. Seller is not liable in association with its warranty or in any other capacity for any consequential, incidental or liquidated damages, late fees/damages or penalties.

8. CLAIM PERIOD- Buyer shall immediately inspect said equipment upon receipt thereof and immediately notify the carrier of any damage, shortage or other nonconformance. Seller is not obligated to consider any claim for damages, shortages or non-conformance unless notified by Buyer within ten (10) days after Buyer's receipt of said equipment.

9. CANCELLATION- Should Buyer cancel this agreement without Seller's prior written consent, Seller may, at its option, recover from Buyer a cancellation charge of not less than 20% of the purchase price hereunder. This cancellation charge is intended to compensate Seller for difficult-to-calculate economic losses, including but not limited to, material and labor costs, as well as loss of anticipated profits suffered due to cancellation.

10. SEVERABILITY – If any provision or provisions of this Agreement shall be held to be invalid, illegal, unenforceable or in conflict with the law of any jurisdiction, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

11. STORAGE- If at such time, within or after the estimated shipment period specified herein, as Seller notifies Buyer that said equipment is ready to be shipped Buyer requests a delay in shipment, Seller may, at its option, agree to store said equipment for a period of time determined by Seller, provided that such agreement will not affect Buyer's obligation to pay in full all invoices as they become due, and provided further that for each month, or portion thereof, said equipment is so stored by Seller, Buyer shall pay to Seller as a storage fee an amount equal to 2% of the purchase price.

12. DRAWINGS, ILLUSTRATIONS AND MANUALS- Catalog and proposal drawings, bulletins, and other accompanying literature are solely for purpose of general style, arrangement and approximate dimensions. Seller may make any changes Seller deems necessary or desirable. Submittal for approval, if required, will be made after receipt of complete information from Buyer. Unless otherwise specified at the time of quotation, six sets will be furnished. Additional sets are at \$25.00 per set. Installation, maintenance and operation manuals will be furnished in the number of copies specified at the time of quotation. If none specified, four will be provided at no added cost, with additional copies at \$50.00 each.

13. PERMITS, LICENSES- Buyer at its sole cost and expense shall obtain all building or other permits or licenses with respect to the installation and operation of said equipment required by any federal, state or local governmental body.

14. PATENT INDEMNIFICATION- Seller shall, at its own expense, defend any suit instituted against Buyer, based on any claim that equipment furnished hereunder infringes any Letters Patent of the United States, and Seller shall pay any damages assessed against Buyer in any such suit, provided that Buyer, upon service of process upon Buyer, gives to Seller notice in writing of the institution of such suit, and permits Seller, through counsel chosen by Seller, to defend the same, and gives Seller all information in Buyer's possession and reasonable assistance and authority to enable Seller so to do. Seller shall have no liability or obligation to Buyer for patent infringement resulting from compliance by Seller with written instructions or specifications of Buyer concerning the structure, operation, material, or method of making equipment furnished hereunder.

Agreed to this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
Buyer

By \_\_\_\_\_  
Print Name

By \_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Address

Is this purchase tax exempt? Yes \_\_\_ No \_\_\_

If YES, attach Sales Tax Exemption Certificate. Failure to provide tax exempt certificate prior to shipment will result in Buyer being responsible for all applicable taxes.

Agreed to this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_  
at Lenexa, KS.

SMITH & LOVELESS, INC.

By \_\_\_\_\_  
Authorized Signature

Prepared by \_\_\_\_\_  
Sales Representative

**NOTE:** The Sales Representative is not an agent or employee of Seller and is not authorized to enter into any agreement on Seller's behalf or to bind Seller in any way.