



# KNOX FDC WRENCH ORDER FORM

## for Fire Sprinkler Contractors

### ORDER TERMS AND CONDITIONS

NOTICE: When a check is provided for payment, you authorize Knox to use information from your check to make a one-time electronic fund transfer from your account, or to process the payment as a check transaction.

As used in this Order Terms and Conditions (the "Agreement"), the words "you," "your," and "customer" each mean the person or entity named on the face of this form as the Customer or Buyer. The words "we," "our," and "Knox" each mean Knox Associates, Inc. d/b/a The Knox Company, an Arizona corporation, with a place of business located at 1601 W. Deer Valley Road, Phoenix, Arizona 85027. The words "Equipment" or "Product" mean the products ordered under this agreement.

1. This Order is based upon these terms and conditions of this Agreement. **Knox rejects any and all other terms and conditions of sale proposed or discussed by the parties in connection with this Order or the resulting transaction. This Agreement shall constitute the entire and exclusive contract of sale between you and Knox, and any additional or different terms in any purchase order, counteroffers, or where ever contained are objected to and rejected.**

2. All orders for Products are subject to availability. We reserve the right to reject any order for any reason. We will use all reasonable efforts to deliver Products by a requested delivery date. However, delivery dates are approximate and we are not liable for delays in delivery for any reason.

3. Subject to payment in full, title to purchased Products will pass to you, FOB our shipping dock.

4. Before shipping Products to you, we will perform our standard factory inspection and acceptance tests on the unit, and satisfactory completion of inspection will constitute your acceptance of the unit. At your request, we will certify in writing our completion of inspection tests.

5. You shall pay all amounts due according to the payment terms on the face of this form, in United States dollars, delivered to us at the address stated on the invoice or as otherwise required by us. If you fail to pay any charges when due, in addition to such overdue amounts you shall pay a late-payment charge on the unpaid balance equal to the lesser of 1.5 percent per month or the lawful maximum. You have no set-off rights.

6. We warrant that Products ordered and subsequently sold to you under this Agreement will conform to our then-current published specifications for the Product and limited to the warranty period specified by Knox for that Product on the date of your order. We reserve the right to make changes to our products and have no obligation to alter previously purchased products. Our sole obligation to you and your exclusive remedy under this warranty is as follows: a) We will repair or replace without charge Products found to be defective so long as you return the Products to us, freight prepaid, to our service center in Phoenix, Arizona. b) We will not be required to ship a replacement until we have confirmed through our examination that your item is in fact defective. We will pay freight costs to ship any repaired or replacement unit to you. If we are unable within a reasonable time to repair or replace your item, then you will be entitled to the refund of your purchase price. c) This warranty does not apply to any unit which we determine has been subjected by you or another party to (1) operating or environmental conditions in excess of our written specifications or recommendations; (2) damage, misuse or neglect; (3) improper installation, repair, modification or alteration; or (4) use for which it was not intended or designed. This warranty also excludes expendable items, such as lamps, fuses, or other parts which fail from normal use. This is our only warranty for Products. **KNOX EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, GUARANTEES OR REMEDIES - WHETHER EXPRESS, IMPLIED, OR STATUTORY - INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.** We also disclaim any implied warranty arising out of trade usage or out of a course of dealing or course of performance. And in no event shall our liability to you exceed the limitations specified in Section 12.

7. You acknowledge that if you or any party on whose behalf you are acting alters, modifies or tampers with the Product or takes any action that compromises the Product's ability to be accessed with the Authorized Agency's Master Key, the Knox Company shall have the right to demand that the Product be removed from use, and that you indemnify and hold the Knox Company harmless from any claims or losses resulting from the such alteration or modification of the Product.

8. You acknowledge that all right, title and interest in all patents, copyrights, trademarks, trade dress, trade secrets and other intellectual property embodied within, covering or in any way regarding the Products is owned exclusively by

Knox, or its licensor(s), and all rights with regard to such intellectual property are reserved. You represent, warrant and covenant that you will not claim any right, title or interest in, or use, any such intellectual property, including any and all codes to keys, keyways and keywrenches all of which remain exclusively the property of Knox or its licensor(s), and that you will not bring any suit or proceeding in an attempt to invalidate or claim any such intellectual property rights.

9. Neither Knox nor you will be liable to the other for any delay or failure to perform if that delay or failure results from a cause beyond its reasonable control.

10. Your exclusive remedies concerning our performance or nonperformance are those expressly stated in this Agreement. **Under no circumstances will Knox be liable for reprourement costs, lost revenue or profits, loss of data, or for any other special, incidental or consequential damages, even if they were foreseeable or you have informed us of their potential.** And we will not be liable for any damages claimed by you based upon any third party claim. **Our total liability to you for your damages under this Agreement will not exceed the price you paid to us for the unit of Products at issue in your claim.** This limitation will apply regardless of the form of action (i.e., whether the lawsuit is in contract or in tort, including negligence.) **Because some states do not allow exclusion or limitation of liability for consequential or incidental damages, in such states Knox's entire liability is limited to the full extent permitted by law.**

11. You shall indemnify and save Knox harmless from all claims, losses, damages, expenses (including reasonable legal fees) and liability resulting from or in any way connected, directly or indirectly, with a breach of your obligations under this Agreement, third party claims, or with the possession, handling, sale or use of the Products or goods made from the Products delivered hereunder.

12. You will be invoiced and will pay all sales, use, excise, and other taxes on Products unless exempt under law or you furnish us with a valid resale or exemption certificate. The reporting and payment of all taxes for Products is your sole responsibility. You will also be responsible for all transportation costs, insurance charges, customs duties, and loss or damage settlements. Our prices for Products do not include such taxes or charges; where applicable, they will be added to your total invoice amount. You will not be responsible, however, for taxes levied against us based upon our net income or net worth (franchise taxes).

13. If for any reason we are unable to supply the total demand for Products specified herein, we may in our sole discretion distribute our available supply of Products among our customers, and we shall have no obligation to purchase supplies of the goods from third parties to enable us to perform our obligations to you under this Agreement.

14. This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona without resort to conflict of laws rules. Each party irrevocably agrees that any action, suit or other legal proceeding against them shall be brought in a court of the State of Arizona or in the United States District Court for the State of Arizona. By execution and delivery of this Agreement, each party irrevocably submits to and accepts the jurisdiction of each of such courts and waives any objection (including any objection to venue, enforcement, or grounds of forum non conveniens) which might be asserted against the bringing of any such action, suit or other legal proceeding in such courts. In the event any proceedings are commenced to enforce or construe this invoice or the goods or services related thereto, then the prevailing party in such proceedings shall be entitled to its reasonable attorney fees thereby incurred. In the event a judgment is entered in such proceedings, it is agreed that said judgment shall provide that the prevailing party shall be entitled to recover all attorney fees reasonably incurred in enforcing said judgment.

15. This Agreement represents the entire agreement between us regarding this Order and Products we are to sell to you under it. The parties specifically disclaim the application of the United Nations Convention on Contracts for the International Sale of Goods. It also supersedes all previous oral or written communications between us regarding its subject matter, and it may not be modified or waived except in writing and signed by an officer or other authorized representative of each party. If any provision is held invalid, all other provisions shall remain valid, unless such invalidity would frustrate the purpose of our Agreement.

