

# **Fitzpatrick IR50 Chilsonator - Sealed Bid**

**Tender**

**2:30pm NZST on Wednesday 3rd June 2020**

**Proquip Solutions Ltd**

Unit 2, 114 Wiri Station Road, Manukau, Auckland, North Island, New Zealand, 2104

**Asset Locations:**

114 Wiri Station Road, Manukau, Auckland, North Island, New Zealand, 2104

| Lot #  | Description                       | Number<br>of Bids | Notes |
|--------|-----------------------------------|-------------------|-------|
| 7371-1 | 208 Fitzpatrick IR250 Chilsonator | 0                 |       |

## **Inspection Information:**

Equipment is available to inspect during office opening hours (please check prior due to COVID-19 restrictions).

# Sales Terms:

Sold subject to Proquip Solutions Ltd "Terms and Conditions". All second hand plant is offered in an as is condition unless otherwise stated Second hand plant is offered based on availability at time of confirmation. Any capacities or sizes quoted are approximates only and based on information supplied to us and are supplied in good faith and Proquip Solutions cannot be accountable for these. Second hand equipment sold subject to availability. The terms specified below shall apply in the absence of any other agreement in writing.

**1. THIS AGREEMENT** 1.1 This Agreement sets out the terms on which we will provide Services to you. We will treat you as having accepted this Agreement if you continue to instruct us after you receive it.

**2. OUR SERVICES** 2.1. We will provide the Services described in the Letter. We will use all reasonable efforts to complete the Services within any agreed time frame but time frames are not legally binding.

**3. WHAT YOU AGREE TO DO** 3.1 You are responsible for: 3.2 Determining that the Services and/or products described in the Letter are adequate for your particular purposes and needs 3.3 Providing us with all reasonable and necessary assistance so that we can provide the Services or Products to you, such as timely and reasonable access to your premises, facilities, networks, Information and Representatives 3.4 Designating one or more competent Representatives who possess suitable skill, knowledge, and/or experience to oversee the Services and delivery of Goods 3.5 Making timely decisions in connection with the Services 3.6 Providing us with accurate and complete Information 3.7 Providing us with all Information that is relevant to the Services, even if the same Information has been given to us previously during another engagement 3.8 Updating any Information where there has been a material change to that Information

**4 YOU ACKNOWLEDGE THAT** 4.1 Our ability to provide the Services depends on you meeting your responsibilities under this Agreement 4.2 We will rely on your Information, the decisions you make and any approvals you give

**5 OUR RESPONSIBILITY TO YOU** 5.1 To the extent permitted by law, our total liability to you under or in connection with this Agreement (whether in contract, tort (including negligence) or otherwise) is limited to one (1) times the amount of the Fees paid in respect of the Services and goods provided.

**6 PERSONAL INFORMATION AND ELECTRONIC COMMUNICATION** 6.1 We will collect, store and disclose any Personal Information provided to us in connection with the Services in accordance with the Privacy Act 1993 6.2 If you provide us with any Personal Information of a third party, you confirm that you have collected that Personal Information in accordance with the Privacy Act 1993 and the individual concerned has 6.2.1 Authorised the disclosure to and use of their Personal Information by us for the purpose for which you disclose it to us; and 6.2.2 Has been informed of their right to access and request correction of their Personal Information. 6.2.3 You authorise us to communicate with you and others electronically. If you have any doubts about the authenticity of any communication or document purportedly sent by us, please contact us immediately

**7 INTELLECTUAL PROPERTY** 7.1 Unless we agree otherwise, we will retain ownership of the Intellectual Property in our Work and, other than Reports, we have no obligation to provide our Work to you or any other person

**8 HEALTH AND SAFETY** 8.1 You agree to comply with the Health and Safety at Work Act 2015 and all regulations, rules, standards, approved codes of practice and any other applicable law relating to health and safety 8.2 You agree to identify and advise us and our Representatives of all hazards which arise in your workplace and which may present a risk to Representatives while providing the Services. You agree to manage those risks, so far as is reasonably practicable, by either eliminating or mitigating those risks 8.3 You agree to notify WorkSafe New Zealand and us of any notifiable event (as defined in the Act) arising out of the conduct of your business which concerns any Representative. 8.4 We agree to consult, co-operate and co-ordinate activities where we share health and safety duties in relation to the same matters

**9 PRICE** 9.1 Price is quoted based on rates and conditions at the date of quotation but is subject to any variation, extras, deletions, price increases and decreases and any applicable taxes incurred or arising between the date of quotation and the date of delivery. Where no quotation applies, prices shall be those ruling at the date of delivery. Until acceptance of our quotation and deposit paid, our quotations and the prices stated in our price list or quotation shall not be binding. After receipt of an order we reserve the right to undertake such changes, as we may deem expedient for the improvement of machinery, equipment, etc. We also reserve the right to substitute any whole pieces of equipment for another whole piece of equipment if quality and function is the same as the part originally specified. Weights, dimensions, capacities, prices, technical and other data listed in catalogues and other printed matter constitute an approximate guide. Drawings or technical documents and proposals remain the property of the Company 9.2 The company may withdraw a quotation at any time. If not withdrawn, this quotation shall remain open for acceptance for a maximum period of 30 days from the date of the quotation at which time it will be deemed to be withdrawn. Acceptance arises upon the signing and return of an acceptance form to the Company, or supply of a purchase order, whichever is earlier 9.3 Hardware purchase in a foreign currency will be calculated at the current day's exchange rate at the date of purchase. Any adverse exchange rate fluctuations between quotation and delivery will be payable by the Purchaser

**10 LOCAL DUTIES AND TAXES** 10.1 Unless otherwise indicated, all prices quoted or submitted do not include any customs charges, port charges, quis permits (Australia), duties, VAT or GST taxes

**11 QUOTATION** 11.1 Only the products and services itemised in this quotation are included in this contract. Any other items not specified in this quotation are excluded. Please contact our representative for clarification and/or variation. Any variation to the quotation must be in writing signed by both parties. Cancellation shall be effected only with our consent in writing, and the Purchaser shall indemnify us for our costs in connection with the making and cancellation of the contract and preparations made for the execution of the contract. If after the time of the order new laws or regulations are introduced that require the parts ordered for the

supply to be changed in any way, such changes shall not come under the scope of the supply. 11.2 All second hand equipment is sold on an as is where is basis, and the Company makes no representations regarding the operation, performance or use of the equipment. 11.3 Any second hand equipment sold by the Company on behalf of a client is sold based on the terms in 10.2 11.4 Any quotations are based upon information and product and processes received by us. Variations to product composition, or manufacture procedure may result in changes to the quotation and may result in extra charges 12 DELIVERY, INSTALLATION AND COMMISSIONING 12.1 The Company shall not be responsible for any failure to deliver or delay in delivery, installation or commissioning caused by any act of God, riot, insurrection, fire, flood, strike, lockout, industrial disturbance, accidents, delays in materials, act of any Governmental authority, priorities granted at the request or for the benefit, directly or indirectly of any Government or public authority, shortage of suitable materials, unavailability of or delay in transportation or any cause beyond the control of the Company. Failure to comply with times of delivery, installation or commissioning shall not entitle the Purchaser to terminate the contract. The Purchaser will not be entitled to damages. Times of delivery, installation and commissioning run from the time when all information, permissions, drawings, any advance payments, etc necessary for starting the work are available, and are stated in effective working days, weeks or months as per the Company's quotation, not including statutory holidays in Wellington, New Zealand 12.2 The Company will use all reasonable endeavours to make delivery, installation and commissioning at the time specified (if any) but if for any reason whatsoever the delivery shall be delayed, the Company shall not be responsible for any loss whatsoever sustained by the Purchaser or any other person, firm or corporation by reason of such delay. 12.3 All goods under this quotation shall be deemed to have been delivered on the date of delivery to the Purchaser's premises. 12.4 If the Purchaser postpones the agreed date of delivery, payment shall fall due on the day originally agreed unless otherwise agreed in writing. Late payment may result in extra charges and delays in shipping, installation or commissioning. 12.5 Any damaged or missing parts are to be brought to the attention of the freight forwarder and the Company immediately. 12.6 Unless otherwise stated, unpacking and locating the equipment to the areas where they will be in operation is the client's care. Unless otherwise stated, commissioning is complete when the plant is carried out on product or material agreed with the Purchaser (which may not be the final product) and this commissioning deems that the plant is complete and meets the quotation specifications. 12.7 At least 20 working days' notice must be given by client for a commissioning date where the client is installing the Company plant and where the Company is undertaking commissioning. 12.8 Where the Company quotation specifically states that commissioning on product is included, the client will make available such raw ingredient as necessary at the client's expense. 12.9 Once installation and commissioning has started, but is delayed due to the site not being ready then a daily charge for costs will be paid by the client. 13 WARRANTY 13.1 The Company warrants and guarantees that the goods and services supplied by it to the Purchaser pursuant to this agreement will perform in accordance with the supplied specifications for a period of 12 months provided that for parts and equipment not of our own manufacture that form part of our supplies the Company's warranty is limited to that granted to the Company by its supplier. 13.2 When second hand or reconditioned goods are supplied, any statement of capacities or performance figures are estimates only and are supplied in good faith on information provided and the Company accepts no liability for these. The Company's guarantee does not cover the consequences of natural wear and tear, overloading, use of inappropriate lubricants, inadequate tending on the part of the Purchaser, inadequate construction works, nor chemical, electrical or other indirect influences. The Company also disclaims all responsibility for the errors of any design provided by the Purchaser. If the Purchaser without the Company's consent has work done by third parties, the guarantee on the parts in question shall no longer apply, and the Company will not reimburse expenses or costs incurred in connection with such work. 13.3 The Company warrants that all new goods supplied pursuant to this quotation shall be in good condition at the date of delivery. 13.4 The warranty may be voided if the user has performed the commissioning of the plant or performed modification without the prior written consent of the Company. 13.5 So far as may be permitted by law it is expressly agreed and declared by the Company and the Purchaser that: 13.5.1 All representations or terms (including any condition or warranty and whether expressed or implied by law or otherwise) not expressly included in these conditions are excluded 13.5.2 All goods are supplied on the basis of these conditions and in the event of any conflict between these conditions and the provisions of any document used by the Purchaser or any other arrangement between the parties, these conditions shall prevail unless otherwise agreed in writing and signed by both parties 13.5.3 The Company shall be under no liability whatsoever to the Purchaser for or in respect of any representations or terms not expressly set out in these conditions to the intent that these terms and conditions shall be the entire contract between the parties 13.5.4 Notwithstanding the preceding provisions of this clause, in so far as the Purchaser may have any claim for damages against the Company at law (it being the intention that no such damages may be recovered) the same shall not include damages for indirect or consequential loss of any kind and shall be limited to the purchase price of the goods or the actual loss or damage suffered (determined in accordance with the principles at common law) whichever shall be the lesser and 13.5.5 The warranty is limited to the supply of parts and workmanship done on installation only. 14 RISK AND OWNERSHIP 14.1 Notwithstanding clause 17.1, the goods will be at the Purchaser's risk immediately on delivery to the Company's premises or the port and the Purchaser is responsible for insuring the goods from this time even though title in the goods may not have passed to the Purchaser. 14.2 The Company shall not be held liable for any loss or damage caused to goods or products that are stored at the Company's premises on behalf of the title owner. It is the responsibility of the title owner to ensure that adequate insurance is in place to cover the goods or products stored at any of the Company's premises. 14.3 At the discretion of the Company's insurers in the event of the second-hand plant being totally destroyed during transit the company may then pay up to double the original sales value of the insured item, re original sales value, plus freight

plus 100% as per their insurance policy. The extra cover will only be paid, if the destroyed item is replaced. If the item or items were not replaced, then the indemnity would revert to the existing basis of settlement, i.e. original sales value, plus freight, plus 10%. In the event of partial loss or damage the policy will reimburse repair costs, including the second hand cost of parts required. The liability limit would be the declared value.

14.4 Until title in the goods passes to the Purchaser, the Purchaser acknowledges that it holds the goods or any products, which incorporate the goods solely as bailee of the Company

14.5 In the event that goods or any products which incorporate the goods sold to the Purchaser include goods in respect of which title has not passed to the Purchaser, the proceeds of the sale of such goods (or the portion of the proceeds of sale of any such mixed products as most closely equated to the proportion of the content of the goods in the mixed products) will belong to the Company and the Purchaser will account for such proceeds to the Company on demand and in no circumstances later than the due date. Pending this accounting such proceeds must not be mingled with any other monies or paid into any overdrawn bank account and shall be held by the Purchaser in a separate bank account on behalf of the Company.

15 COSTS

15.1 The Purchaser agrees to pay all costs and expenses incurred by the Company (on a solicitor/client basis) in obtaining, enforcing or attempting to obtain or enforce payment of any amount owing under these conditions which remain outstanding after the due date for the payment has passed.

16 PAYMENT

16.1 Unless otherwise agreed default interest may be charged at a rate of 15% per annum by the Company on any account unpaid on a daily basis from the due date until actual payment. Receipt of interest is without prejudice to the Company's rights and remedies

16.2 Invoices will be by progress claims payable the 20th of the month following the invoice date, ("the due date") or as specified in the quotation, deposits paid by the Purchaser are not refundable

17 ARBITRATION

17.1 In the event of any dispute of difference arising between the parties hereto concerning the interpretation of this agreement then such dispute shall be referred to arbitration in accordance with the New Zealand Arbitration Act 1996.

17.2 The arbitration shall be commenced by either party giving to the other notice in writing stating the subject matter of the dispute and that party's desire to have the matter referred to arbitration

17.3 The arbitration shall be by a single arbitrator to be agreed upon by the parties or, failing agreement within 10 working days of delivery of the notice to be appointed by the Executive Director of the Arbitrators Institute of New Zealand Incorporated

17.4 Either party within 5 working days of receiving any notice under sub clause 9.1 of this clause may give a notice to the other requesting the dispute to be resolved by way of mediation. If such a request is made then the parties shall try to agree upon mediation. If the parties fail to agree upon a mediator within 10 working days of the delivery of the request for mediation the mediator shall be appointed by the President of the District Law Society or his or her nominee. All discussions in mediation shall be without prejudice, and shall not be referred to in any later proceedings. All costs of mediation are to be shared

17.5 If no agreement has been reached in mediation within 10 working days of the appointment of a mediator then the matter in dispute shall be referred to arbitration in accordance with sub clause 17.3 of this clause

17.6 Where a dispute goes to arbitration, which has previously been referred to mediation the mediator, shall not be called by either party as a witness and no reference shall be made to discussions held in mediation

17.7 The award in the arbitration shall be final and binding on the parties

17.8 All provisions contained in the Second Schedule to the NZ Arbitration Act 1996 shall apply to the arbitration.

18 TITLE AND SECURITY (PERSONAL PROPERTY SECURITIES ACT 1999)

18.1 Title in any goods supplied by the Company passes to the Purchaser only when the Purchaser has made payment in full for all goods and services provided by the Company and of all other sums due to the Company by the Purchaser. Until all sums due to the Company by the Customer have been paid in full, the Company has a security interest in all goods

18.2 If the goods are attached, fixed or incorporated into any property of the Purchaser, by way of any manufacturing or assembly process by the Purchaser or any third party, title in the goods shall remain with the Company until the Purchaser has made payment for all goods and services, and where goods are mixed with other property so as to be part of a constituent of any new goods, title to these new goods shall deemed to be assigned to the Company as security for the full satisfaction by the Purchaser of the full amount owing between the Company and Purchaser

18.3 The Purchaser gives irrevocable authority to the Company and its authorized agents to enter any premises occupied by the Purchaser or on which goods are situated at any reasonable time after Default by the Purchaser or before Default if the Company believes a Default is likely and to remove and repossess any goods and any other property to which goods are attached or in which goods supplied by the Company are incorporated. The Company shall not be liable for any consequential damage to the Purchaser's property, or for any costs, damages, expenses or losses incurred by the Purchaser or any third party as a result of this action, nor be liable in contract or in tort or otherwise in any way whatsoever unless by statute such liability cannot be excluded. The Company may either resell any repossessed goods and property and credit the Purchaser's account with the net proceeds of sale (after deduction of all repossession, storage, selling and other costs) or may retain any repossessed Equipment and Services and credit the Purchaser's account with the invoice value thereof less such sum as the Company reasonably determines on account of wear and tear, depreciation, obsolescence, loss or profit and costs

18.4 Where property is recovered by the Company pursuant to clause 10.3 the Purchaser waives the right to receive notice under s.120 of the Personal Property Securities Act 1999 ("PPSA") and to object under s.121 of the PPSA to the extent that waiver is permissible by law

18.5 The following shall constitute a Default by the Purchaser:

18.5.1 Non-payment of any sum by the due date

18.5.2 The Purchaser indicates that it will not pay any sum by the due date

18.5.3 Any property is seized by any other creditor of the Purchaser or any other creditor indicates that it intends to seize property of the Purchaser

18.5.4 Any goods in the possession of the Purchaser are materially damaged while any sum remains due from the Purchaser

18.5.5 The Purchaser becomes insolvent, is bankrupted or put into liquidation or a receiver is appointed to any of the

Purchaser's assets 18.5.6 A Court judgment is entered against the Purchaser and remains unsatisfied for 5 working days 18.5.7 Any material adverse change in the financial position of the Purchaser. Any variations to these Terms and Conditions are only valid if agreed in writing and signed by the Company.

## **Payment Terms:**

Payments will be made through the Aucto Payment Gateway. Paying via credit cards will only be available for orders under \$5000.



## **Removal Terms:**

Ex-works Proquip Solutions, Manukau, Auckland Packing not included but can be quoted separately on request.

## **Payment Instructions:**

Payments will be made through the Aucto Payment Gateway. Paying via credit cards will only be available for orders under \$5000.