

**Company:** MBARI  
**Attention of:** Dale Graves  
**Tel No:**  
**Your Ref:**

**From:** Kim Swords  
**Our Ref:** KS-1835  
**Date:** 31 July 2013  
**No of Pages:** 3

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**Subject: Quotation for MBARI Scout System**

Dale,

As promised, below is a formal quotation for a Scout Plus (SIU) System. Note that we have removed the 500 m range restriction as discussed and changed the system 'name'. Please let me know if this will cause a problem.

As this was done in the spirit of cooperation based on our past working relationship, Sonardyne would ask that MBARI not broad cast the fact that we have removed the range restriction on a Scout Plus system.

If you have any questions or require additional information, please let me know.

Kind Regards,

Kim Schuetzner Swords  
Sr. Applications Engineer  
**Sonardyne, Inc.**

## Prices – Price

| Item | Qty | CPN       | Description                                                                                                                                                                                                                                                                                                                           | Price \$ | Total Price \$  |
|------|-----|-----------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|-----------------|
| 1    | 1   | 603-0099* | <b>MBARI Scout System</b><br>System consists of:<br>Software including 'Plus' module & CASIUS (User to provide PC)<br>1x Surface Interface Unit & cables<br>1x 30m Transceiver Cable<br>1x 8024 Transceiver<br>1x type 7815 transponder<br>Manuals on CD<br><br><i>* Range restriction of 500 m removed<br/>Academic License Only</i> | 45 116   | 45 116          |
| 2    | 1   | 8271-0003 | <b>WSM6 (omni)</b><br>Sonardyne Wideband® 1 & 2 Signal Technology<br>1000m rated<br>Depth Sensor Fitted<br>Rechargeable NiMH Battery<br>Setup software and manual on CD<br><br>Includes WSM Charging Kit (602-0544)                                                                                                                   | 6 142    | 6 142           |
|      |     |           | Sub-Total                                                                                                                                                                                                                                                                                                                             |          | 51 258          |
| 3    | 1   | NA        | <b>Import</b><br>Charges from original import of items above from UK to Houston.                                                                                                                                                                                                                                                      |          | 1 025           |
|      |     |           | <b>TOTAL</b>                                                                                                                                                                                                                                                                                                                          |          | <b>\$52 283</b> |

A delivery schedule for your equipment can only be confirmed at the time of order placement.

## Terms & Conditions

The prices listed are based on the current exchange rate of 1.59 USD/UK Pound Sterling and are valid for any deviation of +/- \$0.03. Any greater fluctuation beyond +/- \$0.03 shall be adjusted at the date the order is received.

Prices are quoted ex works-packed Sonardyne Houston TX. Any additional freight and handling fees will be to customer's account or recharged at cost plus 15%.

The above prices are valid for 30 days.

Sonardyne's standard terms and conditions of sale apply, subject to a successful credit check. If the credit check is not successful then we reserve the right to change our payment terms to a letter of credit or phased payments.

**THE CONTRACT**

Any quotation supplied by the Seller shall only constitute an invitation to the Buyer to make an offer on the terms of the quotation, and a purchase order received from the Buyer shall constitute an offer to purchase the goods specified in the quotation (the "Goods"). Such offer, if accepted, will be acknowledged in writing by the issue of a Sonardyne Sales Order Acknowledgment (SOA) which in all respects, will be subject to these Conditions of Sale.

**2 ALTERATIONS TO THE CONTRACT**

Once an SOA has been issued by the Seller, offer and acceptance is deemed to have occurred and a contract to have been formed (the "Contract"). Any alterations or variations to the Contract shall only be made if requested in writing by the Buyer, and accepted in writing by the Seller.

**3 START DATE**

Any offer by the Buyer pursuant to clause 1 or request for alteration to the terms of a contract pursuant to clause 2 must be accompanied by sufficient information, drawings, plans and other papers to enable the Seller to proceed forthwith with the construction of the Goods and any period for delivery of the Goods quoted by the Seller shall be extended by a period of time equal to the time between the date of submission of the offer and the date when the Seller shall receive full information, plans, drawings and other relevant papers and the extended period of time shall commence to run at the date of such receipt.

**4 PRICING****4.1 BASIS**

The price of the Goods shall be the price quoted by the Seller, or, where no price has been quoted (or a quoted price is no longer valid), the price listed in the Seller's published current price list converted into U.S. dollars at current Seller stated conversion rates at the date of acceptance of the order. Unless otherwise stated in writing by the Seller, the prices are ex-works prices and delivery charges (including transport, packaging and insurance) will be a separate charge on the invoice or will be invoiced separately.

Payment of the price shall be due at such time specified in the SOA or in the absence of such specification within 30 days of delivery of the Goods. Time for payment shall be of the essence.

Interest on overdue invoices shall accrue from the date when payment becomes due. The rate charged shall be 1-½% per month or part thereof and shall accrue at such rate after as well as before judgment. This provision shall not require the payment or the collection of interest in excess of the maximum rate permitted by applicable law. In the event the rate of interest provided for herein is ever in excess of the maximum rate allowed by applicable law, such rate shall be deemed to be revised to be equal to the maximum rate of non-usurious interest permitted from day to day by applicable law, including Article 5069-1.04, Version's Texas Civil Statutes, as same may be amended or incorporated by reference in other Texas statutes.

**4.2 ALTERATION**

If Buyer desires to amend the terms of the Contract and Seller agrees to such amendment in writing, any additional work or expenses of any kind whatsoever resulting from the amendment shall be charged for by the Seller in addition to the price specified in the original Contract.

**4.3 ANCILLARY CHARGES**

The Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as, without limitation, any significant increase in the costs of labor, material or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.

**4.4 VALIDITY**

The prices quoted in the SOA are valid for a period of 30 days or until the date specified on the SOA, whichever is later. After which time they may be altered by the Seller without giving notice to the Buyer.

**5 DELIVERY**

The Goods shall be delivered at the Seller's address at any time after the Seller has notified the Buyer that they are ready for collection, unless special delivery terms are specified in the SOA or agreed by the Seller in writing prior to delivery.

Any dates quoted for delivery of the Goods are approximate only and the Seller shall not be liable for any delay in delivery of the Goods howsoever caused. Time for delivery shall not be of the essence unless previously agreed by the Seller in writing. The Goods may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer.

Where the Goods are to be delivered in installments, each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the installments in accordance with these conditions or any claim by the Buyer in respect of any one or more installments shall not entitle the Buyer to treat the Contract as a whole as repudiated.

If the Seller fails to deliver the Goods for any reason other than any cause beyond the Seller's reasonable control or the Buyer's fault, and the Seller is accordingly liable to the Buyer, the Seller's liability shall be limited to the difference between the market price of comparable goods at the time the Buyer learns of the breach and the price of the Goods under the Contract, less any expenses saved as a result of Seller's breach. This is the sole remedy available to Buyer and is not cumulative of those provided by the Texas Business and Commerce Code.

If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than for reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then, without prejudice to any other right or remedy available to the Seller, the Seller may:

- (a) Store the Goods until actually delivered and charge the Buyer for the reasonable costs including insurance); or
  - (b) Sell the Goods at the best price readily obtainable (after deducting all reasonable storage and selling expenses)
- account to the Buyer for the excess over the price under the Contract or charge the buyer for any shortfall below the price under the contract.

**6 OWNERSHIP**

Risk of damage to or loss of the Goods shall pass to the Buyer:

- (a) In the case of Goods to be delivered at the Seller's premises, at the time when the Seller notifies the Buyer that the Goods are available for collection;

- (b) In the case of Goods to be delivered otherwise than at the Seller's premises, at the time of delivery, if the Buyer wrongfully fails to take delivery of the Goods, at a time when the Seller has tendered delivery of the Goods.

Despite delivery, title to the Goods shall not pass to the Buyer until the whole of the Contract price has been paid to the Seller (and no other sum whatever shall be due from the Buyer to the Seller).

On default by Buyer, Seller shall have the option of refusing to perform further under this and any other existing agreement between the parties that Seller may elect, and Seller may rescind any agreements between the parties and hold Buyer for all damages and losses occasioned thereby; or of reselling, at public or private sale, undelivered Goods covered by this and any other existing agreement between the parties that Seller may elect. Seller shall not be liable to Buyer for any profit on any resale, but Buyer shall remain liable to Seller for the difference between (i) the Contract price of the Goods, plus all expenses and charges for the account of Buyer specified in the Contract and all expenses of storage and resale, and (ii) the resale price of the Goods.

In any action brought in any court by Seller, any assignee of Seller, or Buyer concerning the Contract or the Goods, the rights and remedies of Seller may be enforced successively or concurrently and the adoption of one or more rights or remedies shall not operate to prevent Seller from exercising any other or further remedy given to Seller under the Contract or applicable law.

**7 CARRIAGE/GOODS IN TRANSIT INSURANCE**

Where specifically instructed in the purchase order and accepted by the Buyer in the SOA, the Seller will, on the Buyer's behalf and at the Buyer's expense, arrange suitable insurance coverage for the Goods in transit. Where the Seller delivers the Goods to a carrier for delivery to the premises of the Buyer, or to such other place as the Buyer shall have directed, any instructions to the carrier shall be deemed to have been made by the Seller as the Buyer's agent.

**8 WARRANTY**

The Goods sold hereunder are warranted free from defects in workmanship and materials for one (1) year subject to the following conditions. No other express warranty is given and no affirmation of Seller, by words or action, shall constitute a warranty. The Seller warrants, subject to the following conditions, upon the return of the Goods to its works by the Buyer or, with prior approval of the Seller to a local agent, (transportation or freight paid), to examine the Goods and should any fault due to defective design, material or workmanship be found, to repair the defective part or parts or, at its own discretion, to supply a new part or parts in place of the same free-of-charge.

The Contract shall be governed by and construed in accordance with the laws of the State of Texas and the applicable laws of the United States of America. The Contract has been entered into in Harris County, Texas. Courts within the State of Texas shall have exclusive jurisdiction over any and all disputes between Seller and Buyer, whether in law or equity, including, but not limited to, any and all disputes arising out of or relating to these conditions of Sale, the Contract or any other related document; and Buyer hereby irrevocably waives any objection it may now or hereafter have to the laying of venue in any such dispute in Federal or State Court in Harris County, Texas. Nothing in the Contract shall be deemed or operate to preclude the enforcement by Seller of any Judgment or order, obtained in such forum or the taking of any action under the Contract to enforce same in any other appropriate forum or jurisdiction and Buyer hereby irrevocably submits to each such jurisdiction. Buyer agrees that service of any summons or suit against it under the Contract may be made in any manner provided by applicable law and Buyer hereby irrevocably waives any right it may have to contest such properly conducted service.

No claim can be accepted for damage due to fair wear and tear, misuse, neglect, dirt, accident, overloading, or other similar causes and the Seller's judgment, in all matters relating to claims, shall be final and conclusive and the Buyer agrees to accept the Seller's decision on all questions as to defects and as to the exchange of the Goods or any part thereof.

The Seller shall not be liable for any defect arising from wilful damage, negligence, failure to follow the Seller's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without the Seller's approval.

**8.5 SELLER DISCLAIMS ANY WARRANTY OF FITNESS FOR ANY PARTICULAR PURPOSES WHATSOEVER WITH RESPECT TO GOODS SUPPLIED IN ACCORDANCE WITH BUYER'S DRAWINGS OR DESIGNS.**

The foregoing warranty is rendered void in any of the following circumstances:

- (a) If any seal, safety device, identification, or instruction plates are deliberately broken or removed from the Goods; except as is necessary to change batteries and/or carryout approved maintenance procedures;
- (b) If any pressure housing has been opened, except as is necessary to change batteries and/or carryout approved maintenance procedures;
- (c) If the Goods are worked beyond their rated capacity;
- (d) If any parts or accessories other than those approved by the Seller have been fitted to the Goods;
- (e) The Seller shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid by the due date for payment;
- (f) The above warranty does not extend to parts, materials or equipment not manufactured by the Seller, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Seller.

**8.7 SUBJECT AS EXPRESSLY PROVIDED IN THESE CONDITIONS ALL WARRANTIES, CONDITIONS OR OTHER TERMS IMPLIED BY LAW ARE EXCLUDED TO THE FULLEST EXTENT PERMITTED BY LAW.****9 CONSEQUENTIAL LOSS**

In any event, and notwithstanding anything contained in this Contract, in no circumstances shall the Seller be liable, in contract, tort (including negligence or breach of statutory duty) or otherwise howsoever, and whatever the cause thereof for any

- (a) Increased costs or expenses.
- (b) Loss of profit, business, contracts, revenues, equipment, or anticipated savings, or
- (c) Special indirect or consequential damage of any nature whatsoever.

Notwithstanding anything else contained in this Contract, Seller's liability in contract tort (including negligence or breach of statutory duty) or otherwise arising by reason of or in connection with this Contract (except in relation to death or personal injury caused by the negligence of the Seller or its employees acting in the course of their employment) shall be limited to the Price of the Goods or amount of insurance coverage, whichever is the greater.

Sonardyne shall not be liable for any delay or for the consequences of any delay in performing any of its obligations under this Agreement if such delay is due to any cause whatsoever beyond its reasonable control, and Sonardyne shall be entitled to a reasonable extension of the time for performing such obligation.

**10 INSOLVENCY OF BUYER**

This clause 10.1 applies if:

- (a) The Buyer should file or have filed against it a petition in bankruptcy, or if Buyer shall make arrangement for the benefit of creditors; or
- (b) A secured party takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or
- (c) The Buyer ceases, or threatens to cease, to carry on business; or
- (d) The Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.

If this Clause applies then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered but not paid for the Price shall be immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

**11 COPYRIGHT**

In the case of Goods made to the Buyer's drawings or designs the Buyer will indemnify the Seller against any claims for infringement of patents, trademarks, registered designs, or copyright or similar matters including all legal and other necessary fees and expense which may arise from carrying out the Buyer's instructions.

**12 PROPRIETARY RIGHTS**

Unless specifically stated to the contrary, and agreed in writing by both parties, the purchase of the Goods by the Buyer does not include any rights whatsoever to the design of the Goods, nor does the Buyer have any license to duplicate, manufacture or copy the Goods or any of the supporting documentation supplied by the Seller.

**12.1 PROPERTY IN DRAWINGS, ETC.**

All drawings, designs, samples and information whatsoever supplied by the Seller at any time remain Seller's exclusive property, must be returned upon demand, must be treated as confidential, and must not be loaned, copied or otherwise used without the written consent of the Seller. Technical information may be supplied to the Buyer at the discretion of the Seller on the understanding that the Buyer agrees not to pass such information to any third party without the written consent of a Director of the Seller.

The Buyer shall not use the Seller's property referred to in this Clause unless it is clearly identified and identifiable as belonging to the Seller and the Buyer shall not deface, obliterate or remove such identifying marks. The Buyer shall permit the Seller to enter the premises where the Seller's property is kept to inspect and/or take possession of the Seller's property.

**13 SPECIFICATIONS**

All descriptions and specifications, drawings, particulars of dimensions, illustrations and other descriptive material contained in any documents of the Seller or submitted with the quotation supplied to the Buyer are approximate only and are intended to present a general outline only and the Seller reserves the right (to which the Buyer hereby assents) to make such modifications of design or construction as are at any time deemed necessary by the Seller to confirm with current technological advances.

**14 GOODS IN TRUST**

The Seller will take reasonable care for any of the Buyer's property which may be in its custody but shall not be held responsible for any loss or damage thereto howsoever caused.

**15 ACCEPTANCE OF CONDITIONS**

Failure by the Buyer to serve notice in writing on the Seller rejecting these conditions (and correspondence or printed matter referring generally to any standard conditions under which the Buyer shall operate shall not constitute such notice), shall constitute acceptance by the Buyer of these conditions in place of any conditions under which the Buyer would otherwise have operated.

**16 SERVICE OF NOTICE**

Any notice required by these conditions to be given to either party shall be deemed to have been served if sent by first class post (or by airmail if outside Europe) addressed to the other party at its registered office (or last known address) and shall be deemed to have been received on the day following the day of posting (or within 3 days of posting if sent by airmail as above).

**17 GOVERNING LAW**

This Agreement shall be governed by the Laws of the State of Texas and the Buyer and Seller irrevocably submit to the jurisdiction of the Texas Courts as regards any claim or matter arising under this Agreement.

**18 ASSIGNMENT**

The Seller reserves the right to assign its rights and obligations under this Agreement. The Buyer shall not be entitled to assign their rights or obligations under this Agreement.

If any portion or provision of these Conditions of Sale is held to be invalid or unenforceable for any reason by a court or governmental authority of competent jurisdiction, then such portion or provision shall be stricken and the remainder of the Conditions of Sale shall continue in full force and effect.