

TERMS AND CONDITIONS OF PURCHASE

1. **Packing and Shipping** – All items shall be suitably prepared and packed for shipment. Buyer will not allow extra charges for packing, cartage or anything else unless stated in this order. Seller shall mark the number of this order on each container and enclose a packing slip with the order number in each container. Seller shall send invoice(s) to Accounts Payable.
2. Prices as specified in this order are those agreed upon and are not subject to increase, unless specifically authorized by an amendment to this order.
3. **Delivery Schedule** – Seller shall follow the delivery schedule shown on this order and shall not make deliveries later, or substantially earlier, than dates shown without written permission. If items are shipped substantially in advance of scheduled delivery dates, Buyer may return them at Seller's expense. If Seller exercises due care, Seller shall not be liable for delays in delivery due to causes beyond his reasonable control. If Seller does not adhere to the delivery schedule, Buyer may either agree to a revised delivery schedule or terminate this order without liability to Buyer. In addition, when the Seller is responsible for a late delivery, and such late delivery directly results in a late shipment by the Buyer, or the Buyer incurs significant additional expenses as a result of the late delivery in order to meet the Buyer's contractual commitments, the Buyer may elect, at his sole discretion, to impose a financial penalty on the Seller for such late delivery. The financial penalty shall not be in excess of the costs incurred by the Buyer as a result of the Seller's late delivery. Seller shall notify Buyer promptly of any delays or of any actual or potential labor dispute which is delaying or threatens to delay the timely performance of this purchase order. Such notice shall include all relevant information with respect to such dispute.
4. **Inspection** – Seller agrees to permit the Buyer's inspectors to have access to the Seller's plant at all reasonable times for the purpose of inspecting any items set forth on this order or work in process for production of such items. All items are subject to final inspection and approval at Buyer's plant or other place designated by Buyer. Such inspection shall be made within a reasonable time after delivery, irrespective of the date of payment. Buyer may return rejected items at Seller's expense. Seller shall not replace items returned as defective unless so directed by Buyer in writing.
5. **Changes** – Buyer may make changes in the drawings, specifications, quantities, delivery schedules, or methods of shipment or packaging on any item at any time. If such changes result in delay or an increase or decrease in expense to Seller, an equitable adjustment of price and delivery schedules will be made. Any claims for adjustment under this Paragraph shall be conclusively deemed waived unless asserted in writing within 30 days of receipt of change notice by Seller. Changes by Seller in prices or other Terms and Conditions of this purchase must be approved by the Buyer in writing.
6. With respect to inventions which Seller may make in the performance of this purchase order, Seller hereby grants to Buyer and its subsidiaries a permanent, paid up, and irrevocable license, both to the United States and Foreign countries, to make, use and sell, and to have others make, use and sell devices or material incorporating or made through use of such inventions. If, however, such inventions result from research and development work performed by Seller for which Buyer pays Seller, either directly or indirectly, Seller agrees to assign to Buyer all rights, title and interest in and to such inventions and to assist Buyer, at Buyer's expense, in securing United States and Foreign patents with respect thereto.
7. **Buyer's Property** – All tools, dies, jigs, patterns, equipment, or material and other items purchased, furnished, charged to and paid by Buyer, and any replacement thereof, shall remain the property of Buyer. Such property shall be plainly marked "Property of Conax Technologies" or other markings directed by Buyer, and shall be safely stored apart from other property. Seller shall not substitute other property for Buyer's property and shall not use such property except in filling Buyer's orders. Seller shall hold such property at its own risk and, upon Buyer's written request, shall re-deliver the property to Buyer in the same condition as originally received by Seller, reasonable wear and tear excepted.

TERMS AND CONDITIONS OF PURCHASE

8. Seller agrees to comply with all Local, State and Federal laws to the extent applicable, including, without limiting the generality of the foregoing, the Walsh-Healey Act (Public Law No. 846, 74th Congress), the Fair Labor Standards Act (Public Law No. 718, 75th Congress), the Domestic Preferences Act (Public Law No. 428, 72nd Congress), and the Vinson-Trammell Act (Public Law No. 135, 73rd Congress).
9. **Warranty** – Seller warrants that all items shall be free from defects of material or workmanship, shall conform to drawings and specifications and shall be of merchantable quality and fit for the purpose for which purchased. Such warranties, together with all other service warranties and guaranties of Seller, shall run in favor of Buyer and its customers.
10. **Patent Indemnity** – To the extent the subject items are not manufactured pursuant to design specified by Buyer, Seller shall indemnify and hold Buyer and its agents and customers harmless from any loss, damage, or liability for infringement of United States patent rights with respect to such items and shall at its own expense defend any action, in which such infringement is alleged with respect to the manufacture, sale or use of such items delivered hereunder; provided Seller is duly notified as to suits against Buyer, and provided further Seller's indemnity as to use shall not apply to any infringement arising out of use in combination with other items where such infringement would not have occurred from the normal use for which the article was designed.
11. **Drawings, Specifications and Technical Information** – Drawings, specifications, photographs and other engineering and manufacturing information supplied by Buyer shall remain Buyer's property, shall not be photostated or otherwise duplicated without Buyer's written consent and shall be returned to Buyer upon completion of order or upon demand. Any information which Seller may disclose to Buyer with respect to the design, manufacture or sale or use of the items covered by this order shall be deemed to have disclosed as parts of the consideration for this order and Seller shall not assert any claim (other than a claim for patent infringement) against Buyer by reason of Buyer's use thereof.
12. **Indemnity and Insurance** – If Seller is to perform any services for Buyer on any premises owned or controlled by Buyer or elsewhere, Seller shall:
 - (a) keep the premises and work free and clear of all mechanic's liens, and furnish to Buyer proper affidavits, and waivers, certifying thereto;
 - (b) perform the work at Seller's sole risk prior to its written acceptance by Buyer and replace at Seller's sole expense all work damaged or destroyed by fire, force or violence of the elements or by any other cause whatsoever;
 - (c) carry workers' compensation insurance covering all employees to be used by Seller in connection with such work and public liability insurance covering Seller's liability under this order;
 - (d) prior to commencing work hereunder, furnish to Buyer certificates of its insurance carrier showing that such workers' compensation and liability and property damage insurance are in force.

Seller shall indemnify and hold Buyer harmless from any and all liability, loss or expense, or claims therefore, arising out of death or personal injury or damage to property or business, by whomsoever suffered, connected with or related to goods or services purchased under this order, including but not limited to the failure of the goods or services to comply with any warranty made by Seller or with any federal, state or local law, rule or regulation applicable to the manufacture or furnishing of the goods or services, provided that his indemnity shall not apply to the extent such liability, loss or expense, or claims therefore, result solely from the negligence of the Buyer. In the event any such claim or liability is asserted against Buyer, Seller shall, at Buyer's option, without affecting Seller's responsibility to indemnify Buyer hereunder, permit Buyer through counsel of its choosing to defend or settle any such asserted claim or liability. Seller will maintain in force adequate insurance to protect against any liability it may incur under this paragraph.

TERMS AND CONDITIONS OF PURCHASE

Seller shall indemnify and hold Buyer harmless from any and all liability under any applicable unemployment insurance laws arising as a result of this order.

Whenever Seller shall by virtue hereof, have in its possession property of Buyer, Seller shall be deemed to be an insurer thereof and shall be responsible for its safe return to Buyer.

13. **Subcontracts** – Seller shall not, without written approval of the Buyer, make any contact with any other person for furnishing any of the completed or substantially completed items covered by this order.
14. Seller shall comply with all Federal, State or Local laws, rulings, regulations and orders pertaining to this order in effect on its date and shall hold Buyer harmless of all liability resulting from failure of such compliance.
15. No articles furnished hereunder, or tools used for producing the same, which have been specially designed for or by Buyer, shall be duplicated for others without the written consent of Buyer.
16. **Fair Labor Standards Act** – Seller represents that the items to be furnished hereunder are produced in compliance with the Fair Labor Standards Act of 1938.
17. **Assignment and Setoff** – Seller shall not assign this order or any right hereunder without Buyer's written consent. Buyer may set off against payable to any person under this order any claim or charge it may have against Seller.
18. If Seller becomes insolvent, or makes an assignment for the benefit of its creditors, or if a petition in bankruptcy is filed by or with respect to Seller, Buyer may, by notice in writing, terminate this order without liability to Buyer, except for items already delivered. Buyer may terminate this order at any time by notice in writing to Seller. In such latter event, Buyer shall pay such cancellation charges as may be agreed upon; in the event of failure to reach such agreement, Buyer will be liable for such sum as may lawfully be owing to Seller on account of such termination. Buyer may terminate upon written notice, if Seller fails to make delivery so as to endanger performance of this order and Seller would pay additional costs engendered thereto. The provisions of this Paragraph shall not limit or affect the right of the Buyer to terminate this order by default of the Seller.
19. **Nondiscrimination in employment:** (Apr. 1961). In connection with the performance of work order under this contract, Seller agrees as follows:

The Seller will comply with all provisions of Executive Order No. 10925 of March 6, 1961, and of the rules, regulations, and relevant orders of the President's Committee on Equal Employment Opportunity created thereby.
20. The laws of the State of New York shall govern the rights and duties of the parties to this contract.
21. Should the Seller provide material which is not in conformance with purchase order requirements, Buyer reserves the right, when it is infeasible to return to the Seller to affect a remedy, and at the Buyer's sole discretion, to rework or repair such material in order to bring into compliance. Buyer shall notify the Seller prior to commencing any rework or repair activity. Seller shall be responsible to reimburse Buyer for incurred expenses associated with rework or repair activities. Costs will be determined based on current Buyer time and material rates, or 25% of the contract value, whichever ever is less, unless a prior arrangement has been mutually agreed to by both Buyer and Seller.

TERMS AND CONDITIONS OF PURCHASE

GOVERNMENT CONTRACT PROVISIONS

When the materials or products furnished are for use in connection with a Government contract, or subcontract, in addition to the above provisions, the additional provisions set forth hereinafter shall apply.

A. **EXAMINATION OF RECORDS** – The Comptroller General of the United States and any of his duly authorized representatives shall, until the expiration of three (3) years after final payment under this order, have access to and the right to examine any directly pertinent books, documents, papers and records of Seller involving transactions related to this order.

B. **GOVERNMENT CONTRACTS** – If this order for material or work is in respect of a government contract, or subcontract, all contract provisions applicable hereto and required by law, order, regulation or Buyer's government contract or subcontract are hereby incorporated herein by reference as fully as if set forth herein in full. Where necessary to make the context of such provisions or clauses applicable to this order, the terms "Contractor," "Contract," and "Government" or "Contracting Officer" (or terms of similar import) shall mean respectively Seller, this order, and Buyer.

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