

# CONVAL, INC.

## Terms and Conditions of Sale – Conditions governing Orders

The terms and conditions of sale outlined herein shall apply to the sale by Conval, Inc. ("Seller") of products, materials, equipment, and parts ("Product") to the original user ("Buyer") and shall constitute the valid and binding agreement of the parties ("Agreement"). All proposals by Seller, all acceptances of Buyer's orders and all sales by Seller are expressly limited to the terms and conditions set forth herein. No modifications of this Agreement shall be binding on Seller unless in writing and signed by a duly authorized agent of Seller.

1. Prices. Prior to Seller's acceptance of a firm order, prices, terms and conditions are subject to change without notice by Seller.
2. Payments. Payments are to be made in U.S. funds. Seller reserves the right to charge interest on past due accounts. Any costs, including, without limitation, attorneys' fees, incurred for a past due collection shall be borne by the Buyer.
3. Warranties, Remedies and Limitations.
  - (a) Warranty – Seller warrants to Buyer that at the time of delivery, Product sold hereunder will be free from defects in material and manufacture and will conform substantially to any Seller specifications expressly set forth in this order. Seller's liability and Buyer's remedy under this warranty are limited to the repair or replacement, at Seller's election, of Product or parts thereof returned to Seller which are shown to Seller's reasonable satisfaction to have been defective; provided that written notice of the defect shall have been given by Buyer to Seller within two years after the date of delivery of such Product by Seller. Transportation charges for the return of defective Product to Seller and their reshipment to Buyer and the risk of loss thereof will be borne by Seller only if returned in accordance with written shipping instructions from Seller.
  - (b) Title – Seller warrants to Buyer that it will convey good title to Product. Seller's liability and Buyer's remedy under this warranty are limited to the removal of any title defect or, at the election of the Seller, to the refund of the purchase price of the Product or the replacement of the Product or parts thereof which are defective in title; provided, however, that the rights and remedies of the parties with respect to patent infringement shall be limited to the provisions of sub-paragraph (c) below.
  - (c) Indemnity from Patent Infringement – If suit is brought against Buyer alleging that Product infringes any United States patent, Seller shall, at its own expense, defend and control said suit and pay any award of damages against Buyer, provided Buyer notifies Seller promptly of the filing of such suit and gives Seller complete control of the same. Seller shall not be liable in any respect except as aforesaid, including without limitation, for any claim of infringement settled by Buyer without Seller's consent. This obligation to indemnify shall not apply to (1) modification of Products by Buyer or any of its customers, (2) use of Products in a manner for which they are not intended by Seller, or (3) the combination or use of a Product with programs, equipment or other goods not furnished by Seller. If a final injunction shall be obtained against Buyer or its customer's use of Product by reason of such infringement, or if in Seller's opinion a Product is likely to become the subject of a claim of such infringement, Seller may, at its option and at its expense (x) procure for Buyer and its customer the right to continue using the Product; or, (y) replace or modify the same so that it becomes non-infringing. The foregoing states Seller's entire liability with respect to infringement in the course of or resulting from the sale or use of Product.
  - (d) Limitation – THE FOREGOING WARRANTIES ARE EXCLUSIVE AND ARE GIVEN AND ACCEPTED IN LIEU OF ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE REMEDIES OF THE BUYER FOR ANY BREACH OF WARRANTY SHALL BE LIMITED TO THOSE PROVIDED HEREIN TO THE EXCLUSION OF ANY AND ALL OTHER REMEDIES. IN NO EVENT SHALL SELLER BE LIABLE TO BUYER ON A CLAIM OF ANY KIND, INCLUDING FOR NEGLIGENCE, FOR LOSS OF ANTICIPATED PROFITS OR REVENUES OR FOR SPECIAL, INDIRECT, INCIDENTAL, CONTINGENT OR CONSEQUENTIAL DAMAGES, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF THE SAME. SELLER'S AGGREGATED LIABILITY RELATED TO ANY ITEM OR ITEMS OF PRODUCT SHALL NOT IN ANY EVENT EXCEED THE PURCHASE PRICE OF SUCH ITEM OR ITEMS OF PRODUCT. NO AGREEMENT VARYING OR EXTENDING THE FOREGOING WARRANTIES, REMEDIES OR LIMITATIONS WILL BE BINDING UPON SELLER UNLESS IN WRITING, SIGNED BY A DULY AUTHORIZED OFFICER OF SELLER.
4. Dimensions. Dimensions shown in the catalog are approximate and subject to change. If dimensions are critical, please check with factory.
5. Design Alterations. Seller reserves the right to make design alterations without notice.

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6. Excusable Delays. Seller shall not be liable to Buyer for any loss or damage suffered by the Buyer, directly or indirectly, as a result of Seller's failure to perform, or delay in performing, any term of condition hereof, where such failure or delay is caused by fires, labor trouble (including strikes and lockouts), war, Government regulations, interruption of or delay in transportation, material shortages, accidents, riots and vandalism, acts of God or other causes of like or different character beyond Seller's control. Seller shall give Buyer reasonable written notification of any material or indefinite delay due to such causes. Within thirty (30) days after receipt of any such notification from Seller, Buyer shall instruct Seller in writing that the portion of this order affected by this delay is either (a) affirmed and the time for performance extended for as many days such causes actually retard deliveries or (b) terminated. Unless Buyer shall have so affirmed and extended the affected portion of this order, Buyer shall pay to Seller as termination charges, all costs incurred by Seller in the performance of the affected portion of this order plus a reasonable profit thereon.
7. Taxes. In addition to the agreed purchase price of Product, any and all taxes (including sales, use and VAT, but excluding any income or excess profit taxes) which may be imposed by any taxing authority, arising from the sale, delivery or use of Product and for which Seller may be held responsible for collection or payment, either on its own behalf or that of the Buyer, shall be paid by Buyer to Seller upon Seller's request.
8. Cancellation. Buyer's order will be subject to cancellation only upon payment to Seller of reasonable cancellation charges, which shall take into account expenses already incurred and commitments made by Seller and Seller's anticipated profit. No item delivered as ordered may be returned for credit without Seller's permission. Authorized returns are subject to a restocking charge.
9. Specials. Products incorporating variations from catalog items are considered special. Specials are not returnable.
10. Fair Labor Standards. Seller hereby certifies that all goods sold hereunder which are produced or manufactured in the United States of America are produced in accordance with the Fair Labor Standard Act of 1938 as amended (29 U.S. Code 201-219), all requirements as to the certificate contemplated in the October 26, 1949 amendment to the Fair Labor Standards Act of 1938 shall be considered as satisfied by this certification.
11. Acknowledgement of Orders. Orders are accepted only by acknowledgement of the Seller from Seller's home office.
12. Bankruptcy. If before completion of this order by Seller, a receiver or trustee is appointed of any of Buyer's property, or Buyer be adjudicated as bankrupt, or application for reorganization under the Bankruptcy Act be filed by or against Buyer which shall not be dismissed with thirty (30) days, or if Buyer becomes insolvent or makes an assignment for the benefit of creditors, or attempts to take the benefit of any insolvency acts, or an execution be issued pursuant to a judgment tendered against Buyer, or should Buyer be unable or refuse to make payment to Seller in accordance with any of its obligations to Seller, then Seller may at its option, in any of such events, terminate this order by giving Buyer written notice of such termination, and Seller shall thereupon be relieved of any further obligations to Buyer and Buyer shall reimburse Seller for its termination costs and expenses, and for expenses already incurred and commitments made by Seller and Seller's anticipated profit.
13. Modifications. No modifications of this order shall be binding unless made in writing and signed by Seller. This order shall be interpreted in accordance with and the construction thereof shall be governed by the laws of the State of Connecticut. The parties hereto agree to accept the exclusive jurisdiction of the courts of the State of Connecticut, and those of the United States of America situated in Connecticut, for the adjudication of any dispute arising herefrom. The parties specifically agree that the United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement or the purchase and sale of products hereunder. Captions, as used in these terms and conditions, are for convenience of reference only and shall not be deemed or construed as in any way limited or extending the language of the provisions to which such captions may refer.
14. Shipments. Title to and risk of loss of all Product sold hereunder by Seller, shall pass to Buyer upon their delivery F.O.B. Seller's factory to an agent of Buyer, including to a common carrier or warehouse as hereinafter provided. Wherever transportation rates and carrier's liability for damage depend upon the value of the shipment as declared by shipper, Seller will declare such value as will entitle Buyer to have Product shipped at the lowest permissible transportation rates unless otherwise instructed in writing by Buyer. Buyer will furnish written shipping instructions for all Product as promptly as possible. In the absence of such instructions, Seller may at any time, beginning ten days after forwarding notice to Buyer by mail or otherwise that the Product is ready for shipment, do either of the following for the account and at the expense and risk of Buyer – arrange for shipment of the Product by a carrier of its own selection to Buyer's place of business or other destination nearby reasonably believed to be suitable, or, warehouse the Product. Buyer will not hold Seller liable for loss or damage attributed to negligence either in selection of the carrier or the warehouse or in agreeing with either of them to contract terms on Buyer's behalf.

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15. Inspection. If upon receipt of Product by Buyer at destination, the same shall appear not to conform to this order, Buyer shall, within thirty (30) days after receipt thereof, notify Seller of such conditions and afford Seller a reasonable opportunity to inspect the Product and make any appropriate adjustment or replacement. The remedies afforded Buyer under the paragraph hereof entitled “Warranties, Remedies and Limitations” shall be exclusive for defective Product discovered upon inspection but shall not be cut off by reason of Buyer’s failure to discover the defective Product within the inspection period provided in this paragraph. Buyer shall not delay payment for the Product pending their inspection.
16. Delivery. Seller will use its commercially reasonable efforts to meet quoted shipment dates provided, however, Seller will not be responsible for any loss or liability suffered by Buyer as a result of delay in delivery of the Product. The Buyer acknowledges that time is not of the essence and it may not cancel due to a reasonable delay in delivery.
17. Seller Security Interest. Until Buyer performs all of its obligations hereunder, including payment in full of the purchase price of the Product, Seller will retain a purchase money security interest in the Product, and in any accessions and improvements thereto, and in any proceeds thereof. Buyer agrees, upon request of Seller, to do all acts necessary and to execute any document required to perfect and maintain such security interest.
18. Non-Assignment. This order is not assignable by Buyer to any third party without the express written consent of Seller, and any assignment in violation of such restriction shall be null and void. Seller shall have the right to subcontract all or any portion of its obligations under this Agreement and may assign any right to payment or other rights hereunder.
19. Documents. Any drawings, sketches, manuals installation instructions or other documents furnished by Seller are strictly stated for the use of Buyer in the assembly and use of the Product. Buyer acknowledges that the information contained in such documents is valuable property, confidential and trade secret information of Seller and Buyer shall take all reasonable steps to protect the confidentiality of such information and documents and shall not disclose, copy, publish, in whole or in part, or otherwise disseminate or make available such information or documents or their contents, in whole or in part, to any party without the prior written permission of Seller. Buyer must make reasonable effort to confirm the accuracy of information in documents provided by Seller. Seller does not guarantee the accuracy of all information contained therein.