



TERMS AND CONDITIONS OF SALE

1. **GENERAL.** Conesys, Inc., a California corporation, is hereinafter referred to as “SELLER.” Items ordered from SELLER in whatever form or quantity are referred to as the “Products.” “BUYER” means the person, firm, company or other entity to which SELLER undertakes to supply the Products. All sales by SELLER are subject to all of these Terms and Conditions of Sale (this “Agreement”). SELLER’s provision of credit, acceptance of any purchase order and sale of any Products (or parts) are expressly made conditional on BUYER’s assent to the terms and conditions of this Agreement. Any offer, acceptance, order, confirmation or other document from BUYER that any contains any terms or conditions in addition to or different than those set forth herein are hereby rejected, objected to and shall not be binding upon SELLER unless acceptance thereof is made in writing by an authorized representative of SELLER and such acceptance expressly acknowledges approval of such different terms and conditions. Failure of SELLER to reject or object to the terms or conditions contained in any purchase order or other communication from BUYER shall not be construed as a waiver of the terms and conditions of this Agreement or of an acceptance of any such other terms or conditions. SELLER reserves the right to correct clerical or stenographic errors at any time. BUYER acknowledges that he/she/it has read the terms and conditions of this Agreement, understands them and agrees to be bound by them. This Agreement is not assignable by BUYER, except with the written consent of the SELLER.

2. **DELIVERY DATES.** While SELLER will use commercially reasonable efforts to deliver Products in accordance with delivery dates quoted or acknowledged by SELLER, all such dates are approximate and are not guaranteed. SELLER shall not be responsible or liable for non-shipment of the Products or delays in delivery or performance due to any cause beyond SELLER’s reasonable control, including, but not limited to: acts of God; acts of BUYER; strikes or other labor disturbances; SELLER’s inability to obtain, or material increases in the cost of, fuel, raw materials or parts; delays in transportation; repairs to SELLER’s equipment; refusal or cancellation of export licenses; or accidents. Acceptance of the Products upon delivery shall constitute a waiver by BUYER of any claims for damages or losses on account of delays in delivery or performance.

3. **WARRANTY AND EXCLUSIVE REMEDIES.** SELLER warrants that the Products manufactured by it will be free from defects in workmanship and material under normal use and service. Any Products, components or parts manufactured or supplied by others are sold exclusively under such warranty as such manufacturer may give to SELLER and only to the extent enforceable by SELLER. SELLER does not warrant the amount or quality of production BUYER may or will achieve from its use of the Products unless expressly stated in SELLER’S written specifications. SELLER warrants that, when delivered, the Products will be designed and manufactured to perform the mechanical functions expressly stated in SELLER’S written specifications only if the Products are maintained and operated under proper conditions by competent, adequately trained personnel using procedures as may be specified by SELLER. If any Product is found and reported in writing within one year from date of delivery (or such earlier date if BUYER refused to accept delivery) (the “Warranty Period”) to have been Defective (as defined below) when delivered, and provided further that immediate notification in writing is given to SELLER, SELLER will replace or repair such Product. Defects caused by normal wear is excluded from SELLER’S warranty. No claim for damages for Products that do not conform to SELLER’S written specifications will be allowed unless SELLER is given (a) immediate notice after the delivery of the Products to the first destination to which they are shipped, and (b) a reasonable opportunity to inspect the Products. “Defective” or “Defect” means a material defect which prevents performance of the Products to the standards, if any, set forth in SELLER’S written specifications. During the repair of the Products, all risk of loss shall remain with BUYER, and BUYER shall procure and maintain adequate insurance coverage to replace the Products. Replacement of parts manufactured or supplied by others is subject to that manufacturer’s or supplier’s consent and to BUYER’S returning that Product to SELLER, F.O.B. SELLER’S plant. No parts may be returned without SELLER’S prior written consent. THE FOREGOING WARRANTY EXTENDS TO BUYER ONLY AND NOT TO BUYER’S CUSTOMERS, SUCCESSORS OR ASSIGNS, IS EXCLUSIVE, AND IS IN LIEU OF ALL OTHER WARRANTIES (WHETHER WRITTEN, ORAL OR IMPLIED) INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. The foregoing shall be SELLER’S sole warranty obligation and BUYER’S sole and exclusive remedy with regard to Defective Products and warranty claims. The total liability of SELLER with respect to the performance of the Products or breach of this Agreement in connection with the manufacture, sale, delivery, installation or repair of the Products purchased hereunder, or the technical direction covered by or furnished under this Agreement, is limited to making, within the time period set forth above, such modifications as may be necessary to achieve performance of the Products to SELLER’S specified standards, if any, and to repairing or replacing Defective Products that have been identified by BUYER. If SELLER and BUYER are unable to correct a Defective Product, SELLER’S sole liability shall be to repay any portion of the purchase price paid for such Defective Product upon BUYER’S returning it to SELLER F.O.B. SELLER’S plant. SELLER SHALL NOT BE SUBJECT TO ANY OTHER OBLIGATIONS OR LIABILITIES ARISING OUT OF BREACH OF CONTRACT OR BREACH OF WARRANTIES, INCLUDING WITHOUT LIMITATION ANY OBLIGATIONS OR LIABILITIES ARISING FROM TORT CLAIMS, INCLUDING NEGLIGENCE AND STRICT LIABILITY, OR ARISING UNDER ANY OTHER THEORIES OF LAW WHATSOEVER. SELLER SHALL NOT BE LIABLE FOR LOST PROFITS OR FOR ANY SPECIFIC, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL LOSS, DAMAGE, EXPENSE OR INJURY OF ANY KIND WHATSOEVER. BUYER shall reimburse SELLER for the travel expenses and time of any service technician or engineer who travels to BUYER’S plant at BUYER’S request to troubleshoot problems and who identifies failed parts, improper maintenance or improper operation as a contributing cause(s).

Any (a) modification to the Products without SELLER’S prior written approval, (b) improper use of the Products, whether intentional or unintentional, (c) operation beyond capacity, (d) failure to report a Defect to SELLER within the Warranty Period, (e) substitution or addition of components or parts not approved by SELLER, (f) failure or damage due to misapplication, lack of proper maintenance, abuse, improper installation, or abnormal conditions of temperature, moisture, or corrosive matter, or (g) alteration or repair by others in any manner which in SELLER’S sole and absolute discretion adversely affects the Products, shall void the SELLER’S warranty in its entirety and releases SELLER from all of its warranty obligations.

4. **ENTIRE AGREEMENT.** This Agreement contains the entire agreement between BUYER and SELLER with regard to the Products and can be modified or rescinded only by a writing signed by both parties. No waiver of any provisions of this Agreement shall be binding unless in writing signed by an authorized representative of the party against whom the waiver is asserted and shall only apply to the specific case for which the waiver is given. Failure of either party to insist upon strict performance of this Agreement shall not be construed as a waiver of any terms or conditions thereof. Whenever the consent, approval, acceptance, acknowledgment or waiver of SELLER is required under this Agreement, the same shall not be effective unless in writing and witnessed by a duly authorized representative of SELLER. For the avoidance of doubt, email correspondence shall not be sufficient to constitute the consent, approval, acceptance, acknowledgment or waiver of SELLER.

5. **CHANGES.** Changes to the specifications or Products descriptions shall be valid only if in writing signed by authorized representatives of BUYER and



SELLER. Such changes must provide for any modification in the price or in time of delivery. Minor variations by SELLER in the details of design or construction of the Products shall not give rise to any warranty claim or claims of Defect or default, and the SELLER reserves the right to make such minor changes in details of design and construction as it determines in its sole and absolute discretion constitute an improvement over those set forth and described in this Agreement.

6. **INTELLECTUAL PROPERTY.** SELLER's intellectual property includes but is not limited to all testing data, reports, inspection results, manuals, procedures and technical designs created or supplied by SELLER regarding the Products and is owned solely and exclusively by SELLER. SELLER has the right to refuse to provide any of its intellectual property to BUYER unless and until BUYER has signed and delivered to SELLER a confidentiality and non-disclosure agreement in a form approved by SELLER. SELLER warrants that none of the Products infringes any U.S. patent, trademark or copyright; provided, however, that BUYER shall immediately (a) upon receipt forward to SELLER any communication alleging such infringement, (b) forward to SELLER all claims, demands, pleadings and other papers served in any action charging infringement, (c) give SELLER the sole right to defend any such actions at SELLER's expense, and (d) give SELLER the option at any time up to or after judgment at SELLER's expense to minimize BUYER's damage or liability (i) by altering the Products to make it non-infringing, (ii) by exchanging a non-infringing part which will fulfill substantially the same function for the infringing part, which in that case shall become SELLER's property, (iii) by obtaining a license permitting BUYER's use of any infringing part, or (iv) by repurchasing the infringing Products at BUYER cost. SELLER's sole obligation and maximum liability under this intellectual property warranty shall be (a) to indemnify BUYER for any money judgment recovered against BUYER in a court of competent jurisdiction plus BUYER's reasonable attorney's fees if SELLER does not undertake the defense of such action, and (b) to repurchase at BUYER's cost any part held by a court of competent jurisdiction to be infringing that BUYER is prevented from using by reason of an adverse judgment. All of SELLER's liability hereunder is subject to due and strict performance by BUYER of the above conditions and the limitations of Paragraph 3 above. No warranty is made (x) as to process patents unless expressly stated herein, (y) as to infringement resulting from compliance with specifications supplied by BUYER, or (z) as to or from any combination of the Products with other equipment, component or part not supplied by SELLER. As to any Products furnished by SELLER to BUYER, manufactured in accordance with specifications supplied by BUYER, BUYER shall indemnify, defend and hold SELLER harmless from and against all claims, demands, liabilities, costs, expenses (including attorneys' fees) and suits brought, alleged, suffered or sustained by or against SELLER related to or arising out of, directly or indirectly, any patent, trademark or copyright infringement claim, lawsuit or allegation.

7. **PAYMENTS.** Credit terms are as set forth in SELLER's proposal. All sums owing to SELLER that not paid when due shall bear interest at the rate of one and one-half percent (1 1/2%) per month. Payments by check, whether full or partial, and regardless of writings, legends or notations upon such checks or payments, and regardless of other writings, statements or documents delivered in connection therewith, shall be applied by SELLER against any amount owing by BUYER with full reservation of all of SELLER's rights, and without an accord and satisfaction or any reduction of BUYER's liability. In the event BUYER fails to make payment to SELLER of any amounts due and owing to SELLER (including any applicable surcharge or freight charge), all amounts owing to SELLER shall be immediately due and payable, SELLER shall have the right to terminate any of BUYER's orders or any unfulfilled portion thereof, and SELLER may terminate any other agreement between SELLER and BUYER. BUYER will not set off or recoup invoiced amounts or portions thereof against sums that are due or may become due from SELLER, its parents, affiliates, subsidiaries or other divisions or units.

8. **TERMINATION.** Except as provided in Paragraph 5 hereof, this Agreement is not subject to termination or change unless requested by BUYER and accepted in writing by SELLER. In the event of any such termination, BUYER shall pay to SELLER, within 30 days of such termination, all costs and other expenses incurred by SELLER prior to receipt of the request for termination (including but not limited to engineering and manufacturing expenses and all commitments to its suppliers, subcontractors, and others), plus a fifteen percent (15%) of the total of the foregoing to compensation SELLER for its overhead, profit and demobilization costs.

9. **CHOICE OF LAW.** This Agreement shall be construed under the laws of the State of California. Except with regard to actions and proceedings referred in Paragraph 12, the courts of California shall have exclusive jurisdiction over all controversies arising out of or in connection with this Agreement. BUYER hereby consents to the personal jurisdiction of the state and federal courts located in Los Angeles County, California, and further agrees that process may be served upon BUYER in any such action by registered mail at any address provided by BUYER. BUYER expressly waives any objection based on *forum non-conveniens* or any objection to venue of any such action. If service is made in any manner other than personally within California, BUYER shall be entitled to a period of twenty (20) additional days to file an answer over and above the time permitted by law. The parties hereto covenant and agree that if either acquires any right or rights to bring any action, suit or proceeding against the other for or as a result of any breach of this Agreement, except for non-payment of the purchase price, the party acquiring such right or rights shall be conclusively deemed to have waived and relinquished the same unless such action, suit or proceeding is commenced within one year after such right or rights arose. BUYER will comply with all applicable export and import control laws and regulations, including the United States Export Administration Regulation (EAR) and the United States International Traffic in Arms Regulations (ITAR), and will retain documentation evidencing such compliance.

10. **CONFIDENTIAL INFORMATION.** Any and all specifications, information, documents, samples and other materials of whatever description, blueprints, drawings, diagrams or price lists, whether disclosed verbally or in written, graphic, photographic, recorded, prototype or sample form, that relate to the design, manufacture, marketing, sale or production of the Products or accompanying any proposal are the confidential and proprietary property of SELLER, shall remain the property of SELLER, shall remain subject to recall at any time by SELLER, and shall not be disclosed to any third party or used for the design or manufacture of any other equipment, machine, tool, item or process.

11. **SECURITY INTEREST.** SELLER reserves a purchase money security interest in the Products, all additions and accessions thereto and all replacements, products and proceeds thereof to secure payment of all amounts due Seller hereunder or otherwise. Such security interest shall be retained and preserved until all amounts owed by BUYER to SELLER are paid in full. BUYER agrees that SELLER will have the right to file this contract or financing statements pursuant to the California Uniform Commercial Code or other applicable law to evidence or perfect SELLER's security interest in the Products. At SELLER's request, BUYER shall join with SELLER in executing such financing statements, and BUYER hereby grants SELLER a limited, irrevocable power of attorney and appoints SELLER as its attorney-in-fact to execute a financing statement on BUYER's behalf. BUYER shall pay upon demand all fees, taxes and assessments associated with the filing of this Agreement or financing statements.

12. **SAFETY.** BUYER shall use and require its employees and contractors to use safe operating procedures when installing the Products and shall comply with all laws, rules and regulations of any and all governmental bodies or agencies, including (without limitation as to operations conducted in the United



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States) the Occupational Safety and Health Act of 1970 (OSHA), as amended, and the regulations promulgated pursuant thereto and all amendments thereto with respect to the installation, operation and use of the Products. BUYER shall not alter or misuse the Products in any manner regardless of whether it may constitute a danger to persons or property. BUYER shall defend, indemnify and hold harmless SELLER, and its shareholders, officers, directors, employees, agents and contractors, from and against all claims, damages, causes of action, liabilities, losses and expenses (including attorneys' fees) arising out of or resulting from (directly or indirectly) BUYER's or its employees' or contractors' failure to comply with the obligations set forth in this paragraph, and regardless of whether the plaintiff or any other party alleges that BUYER or SELLER acted negligently. In addition to the contractual indemnification herein, SELLER shall be entitled to contribution from BUYER in any action or proceeding brought against SELLER, and BUYER consents to being named as a third-party defendant in any such action and further consents to the personal jurisdiction of the court in which such action or proceeding is pending.

13. **TAXES.** All taxes of any kind levied by any federal, state, municipal or other governmental authority, which tax SELLER is required to collect or pay with respect to the production, sale, or shipment of the Products, or any parts or components thereof, sold to BUYER shall be the responsibility of BUYER. BUYER agrees to pay all such taxes and further agrees to reimburse SELLER for any such payments made by SELLER.