

COVEGA Corporation
TERMS AND CONDITIONS OF SALE
COVEGA PRODUCTS AND SERVICES

THE FOLLOWING TERMS AND CONDITIONS CONSTITUTE THE SOLE TERMS AND CONDITIONS UPON WHICH SELLER AGREES TO SELL THE PRODUCTS AND PROVIDE THE SERVICES ORDERED PURSUANT TO THIS AGREEMENT AND SHALL BECOME THE EXCLUSIVE AND BINDING AGREEMENT BETWEEN THE PARTIES COVERING SUCH PRODUCTS AND SERVICES. ANY ACCEPTANCE OF THIS OFFER IS LIMITED TO ACCEPTANCE OF THE EXPRESS TERMS OF THE OFFER CONTAINED IN THIS DOCUMENT. ANY PROPOSAL FOR ADDITIONAL OR DIFFERENT TERMS OR ANY ATTEMPT BY BUYER TO VARY IN ANY DEGREE ANY OF THE TERMS OF THIS OFFER IN BUYER'S ACCEPTANCE SHALL BE DEEMED MATERIAL AND IS HEREBY OBJECTED TO AND REJECTED. SUCH PROPOSAL SHALL NOT OPERATE AS A REJECTION OF THIS OFFER UNLESS VARIANCES ARE IN THE TERMS OF THE DESCRIPTION, QUANTITY, PRICE, OR DELIVERY OR PERFORMANCE SCHEDULE OF THE PRODUCTS OR SERVICES BUT SHALL BE DEEMED A MATERIAL ALTERATION HEREOF, AND THIS OFFER SHALL BE DEEMED ACCEPTED BY BUYER WITHOUT SAID ADDITIONAL OR DIFFERENT TERMS. ANY ADDITIONAL OR DIFFERENT TERMS WHICH MAY BE CONTAINED IN ANY DOCUMENTS FURNISHED BY BUYER ARE HEREBY OBJECTED TO AND REJECTED.

1. PRICE

1.1 Prices for products are F.O.B. Jessup, Maryland, unless otherwise specifically provided. List prices do not include any sales, use, or other taxes, and such taxes shall be paid by Buyer, or in lieu, Buyer shall provide a valid exemption certificate acceptable to taxing authorities. Quoted prices are valid for thirty (30) days from the date of quotation.

2. ITEMS INCLUDED

2.1 Each sale includes only the products and/or services described in the order and does not include any other product or service, unless specifically provided in COVEGA's quotation.

3. PAYMENT TERMS AND CREDIT

3.1 Upon shipment and/or completion of the services, COVEGA shall generate an invoice for the products shipped or services provided. Payment terms are net thirty (30) days from the date of invoice.

3.2 Buyer acknowledges that Seller's credit department may, in its sole discretion, impose more stringent payment requirements, including requiring payment in advance. Should Buyer become delinquent in payment of any sum due hereunder, Seller shall not be obligated to continue performance under this agreement. Seller reserves the right to charge interest, at the maximum legal rate, on all delinquent accounts.

4. SECURITY INTEREST

4.1 If Buyer fails to pay the total sum due hereunder within sixty (60) days of shipment, Seller hereby reserves and Buyer hereby grants a purchase money security interest in the products sold hereunder and the proceeds thereof. In the event of default by Buyer of any of its obligations to Seller, Seller shall have the right to repossess the products sold hereunder with liability to Buyer. Upon request of Seller, Buyer agrees to promptly execute financing statements and such other instruments as Seller desires to perfect or maintain its security interest.

5. SHIPMENT/ PERFORMANCE SCHEDULES

5.1 Shipment of products and performance of services shall be scheduled as mutually agreed upon between Buyer and Seller. Seller shall make reasonable efforts to meet any shipment or performance date(s) quoted or acknowledged; however, Seller shall not be liable for any failure to meet such date(s) unless Seller has agreed in writing to accept a penalty clause. Shipment commences upon receipt of hard copy purchase order only.

5.2 Rescheduling. Buyer may reschedule an order for products or services only upon the written consent of Seller. Any such rescheduling must be for delivery of products or performance of services within three (3) months of the originally scheduled delivery or performance date, and Buyer shall be required to pay a progress payment for materials and labor in progress.

6. SHIPMENT, PACKING AND RISK OF LOSS

6.1 Point of Delivery and Shipping Charges. Delivery shall be made F.O.B. Seller's plant. Buyer shall pay all shipping and insurance charges incurred from the delivery point (including transportation, routing, rigging and accessorial charges). In the event of foreign sales, Buyer shall pay all shipping charges incurred from Seller's dock to Buyer's dock including charges for customs clearance site.

6.2 Method of Shipment. Unless otherwise agreed in writing, Seller shall prepay freight charges for Buyer and add such charges to Seller's invoice. Seller shall ship in accordance with its standard shipping practices.

6.3 Packing. Unless otherwise agreed in writing, all products shall be packed, if appropriate, for shipment and storage in accordance with standard commercial practices. All packing shall conform to requirements of the carrier's tariffs. Any request from Buyer to package products differently may subject Buyer to an additional charge.

6.4 Risk of Loss. Title to the products and risk of loss or damage shall pass to Buyer upon shipment via designated common carrier, F.O.B. Seller's plant.

7. INSTALLATION/PERFORMANCE OF SERVICES

7.1 Installation of the products is the responsibility of the Buyer, unless otherwise agreed. Seller is not responsible for any loss or damage arising out of any work performed on Buyer's premises, unless the loss or damage is proximately caused by Seller's negligence.

7.2 Acceptance. Acceptance shall be deemed to occur at the time the product or item services satisfactorily performs and complies with COVEGA's standard acceptance criteria or alternate acceptance criteria mutually agreed to in writing, or within forty-five (45) days after shipment or completion of the services, whichever is earlier. Any productive use of the system(s) by the customer shall be deemed as an acceptance of the system by the customer.

8. CANCELLATION CHARGES

8.1 In the event Buyer should cancel an order for products, cancellation charges (if not otherwise delineated in Seller's quotation to Buyer) shall be paid to Seller based upon a percentage of the price for the cancelled products, and the relation of the date of cancellation to the order date as follows:

<u>Cancellation Date</u>	<u>Cancellation Charge</u>
0-40 days prior to scheduled shipment date.	80% of contract price
41-90 days prior to scheduled shipment date.	50% of contract price
91 or more days prior to scheduled shipment date.	30% of contract price

Buyer acknowledges and agrees that these charges are necessary and appropriate to compensate Seller for its expenses incurred prior to Buyer's cancellation of an order, in whole or in part, and are reasonable in view of the circumstances existing at the time this transaction is entered into. Buyer agrees to pay all invoices for cancellation charges within 30 days.

9. WARRANTY AGAINST INFRINGEMENT; INDEMNIFICATION BY BUYER

9.1 Seller warrants that the products sold hereunder shall be delivered free of the rightful claim of any third person by way of infringement or the like; provided, however, that if Buyer furnishes specifications to Seller, then Buyer must hold Seller harmless and indemnify Seller against any infringement or other claim involving alleged violation of intellectual property rights arising out of compliance with Buyer's specifications. Seller's warranty against infringement shall not apply to any claim based upon (a) any alteration of Seller's product by any person other than Seller or (b) use of Seller's product on or in conjunction with any equipment or item not supplied by Seller for use with the product or (c) use of the products in connection with any

process. Buyer's indemnification obligations shall survive the termination of this agreement.

10. PROPRIETARY INFORMATION AND TECHNOLOGY RIGHTS

10.1 Proprietary Information - Confidentiality. Any documentation, data, or information of any kind supplied by Seller to Buyer shall be deemed proprietary to Seller and treated as confidential by Buyer. Seller retains for itself all proprietary rights in and to all Confidential Information. Buyer shall not disclose, without Seller's written consent, any Confidential Information to any other person, or use Confidential Information for any purpose other than performing under this agreement. Buyer shall return all Confidential Information, together with all copies thereof, to Seller at Seller's request. The obligations under this paragraph shall survive the cancellation, termination or completion of this agreement. Seller may, at its sole option, require Buyer to execute a separate confidentiality agreement acceptable to Seller as a condition to providing any documentation or data which it considers proprietary or confidential.

10.2 Technology Rights. All products, information and technology produced, conceived or otherwise developed by or for Seller, or as a result of technology furnished by Seller, shall be the sole property of Seller, and Buyer shall have no ownership or other rights in such property. Buyer agrees to use such products, information and technology only in connection with products or services furnished by Seller and otherwise to retain them as confidential in accordance with Section 10.1 above. Buyer, at its cost, hereby assigns to Seller all right, title and interest in all inventions, trade secrets, patents, mask works, copyrights, trademarks and other intellectual property developed by or for Seller in connection with the conception, design, development or manufacture of products or services and shall fully cooperate with and assist Seller in perfecting such rights.

11. SALE CONVEYS NO LICENSE

11.1 The sale of products or services hereunder by Seller does not convey any license under any patent, copyright, trade secret or other proprietary right with respect to which Seller can grant licenses. Seller expressly reserves all of its rights with respect to such patent, copyright, trade secret and/or other proprietary rights.

12. MODIFICATIONS AND CHANGES

12.1 If Buyer makes changes in the specifications applicable to products ordered hereunder and if Seller agrees to make such changes, Buyer shall be responsible for Seller's additional costs in complying with such changes.

13. LIMITED WARRANTY AND DISCLAIMER; REMEDY

13.1 Warranty and Warranty Period. Seller warrants that all products provided hereunder shall be free from defects in material and workmanship under normal use and service, and all services shall be performed in a good and workmanlike manner. This warranty is subject to the following conditions: (a) misuse, unauthorized repair, inadequate or improper maintenance, alteration of product, or similar inappropriate conduct by Buyer shall absolve Seller from any liability; and (b) Buyer must notify Seller of any claim for breach of warranty within ten (10) days after the claim arises. This warranty does not extend to any defect which arises as a result of causes external to the product (such as power or air conditioning failure) which are not covered by warranty or which arise out of the installation or use of parts not authorized by Seller. Except as otherwise agreed by Seller in writing, this warranty does not extend to any custom products which have been produced to Buyer's specifications. Unless a specific warranty period is delineated in Attachment A hereto, the foregoing warranty shall extend for a period of one year from the date of delivery of any product.

13.2 DISCLAIMER. THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, EXCEPT FOR ANY WARRANTIES SET FORTH IN THIS DOCUMENT, ARE EXCLUDED FROM THIS TRANSACTION AND SHALL NOT APPLY TO THE PRODUCTS OR SERVICES SOLD.

13.3 Remedy. Buyer's exclusive remedy against Seller shall be for Seller to use its best efforts to repair or replace any defective

products or remedy any unacceptable services. Any such repair, replacement or remedy shall be at no charge to Buyer. If Seller is unable to repair or replace a defective product, or remedy an unacceptable service then Buyer's sole remedy shall be the return of the purchase price for that product or service. No other remedies (including, but not limited to, incidental or consequential damages for lost profits, lost sales, injury to person or property, or any other incidental or consequential loss) shall be available to Buyer.

14. EXCLUSION OF CONSEQUENTIAL DAMAGES; LIMITATION OF LIABILITY

14.1 EXCLUSION OF CONSEQUENTIAL DAMAGES. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, SELLER SHALL NOT, UNDER ANY CIRCUMSTANCES, BE LIABLE TO BUYER FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL OR INDIRECT DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREUNDER, EVEN IF SELLER HAS BEEN APPRISED OF THE LIKELIHOOD OF SUCH DAMAGES.

14.2 LIMITATION OF LIABILITY. IN NO EVENT SHALL SELLER'S LIABILITY TO BUYER FOR BREACH OF THIS AGREEMENT EXCEED THE AGGREGATE PRICE OF THE PRODUCTS OR SERVICES PURCHASED BY BUYER HEREUNDER.

15. MERGER CLAUSE, ORAL STATEMENTS NOT BINDING

15.1 Seller's representatives may have made oral statements about the products subject to this agreement. Those statements are not warranties, should not be relied on by Buyer and are not part of the contract for sale. The entire contract is embodied in this writing. This writing constitutes the final expression of the parties' agreement, and it is a complete and exclusive statement of the terms of that agreement.

16. MISCELLANEOUS

16.1 Insolvency and Demands for Assurances. Except as may be prohibited by applicable law, Seller may cancel any unfilled order or obligation hereunder in the event one of the following occurs: (i) Buyer becomes insolvent or unable to pay its debts as they mature; (ii) voluntary or involuntary bankruptcy proceedings are instituted by or against Buyer; (iii) a receiver or trustee is appointed for the benefit of Buyer's creditors; (iv) an assignment is made for the benefit of Buyer's creditors; or (v) Buyer fails to provide an adequate written response within ten (10) days to a demand by Seller for assurance of Buyer's intention and ability to perform under any contract with Seller.

16.2 Indemnification. Seller makes no representations or promises concerning indemnification of Buyer or Buyer's agents except as set forth in this agreement.

16.3 Buyer's Breach. In the event that Buyer breaches this agreement, Buyer shall be liable to Seller for all direct and indirect damages, losses or injuries caused by such breach.

16.4 Seller's Quotation and Response to Specifications. Seller's quotation and response to Buyer's specifications, if applicable, shall be deemed to be incorporated herein by reference.

16.5 Force Majeure. Seller shall not be responsible, in any manner, for any failure or delay in the performance of any of its obligations hereunder caused by a strike, lockout or other industrial disturbance, act of public enemies, any government action, any civil or military action, insurrection, riot, landslide, hurricane, drought, fire, earthquake, explosion, flood, storm, act of God, or any other cause or event not reasonably within Seller's control.

16.6 Objection to Arbitration. Seller hereby objects to the submission to arbitration of any claims or disputes concerning this agreement.

16.7 Notices. Any required notices shall be given in writing at the address of each party or to such other address as either party may substitute by written notice to the other.

16.8 Assignment. Neither party may assign or transfer any of the rights, duties or obligations herein without the prior written consent of the other, and any purported attempt to do so shall be null and void.

16.9 Waiver. No waiver of any provision of this contract shall be effective unless made in writing. No waiver of any breach of any

provision of this contract shall constitute a waiver of any subsequent breach of the same or any other provision of this contract.

16.10 Regulations Not Incorporated. No U.S. Government Procurement Regulations shall be included hereunder and binding on either party unless specifically agreed to in writing prior to incorporation herein.

16.11 Clerical Errors. Stenographical, typographical and clerical errors are subject to correction.

16.12 Compliance with Law. Unless otherwise agreed in writing, Buyer assumes all responsibility for obtaining any required export authorization, and Buyer agrees to indemnify Seller against any liability resulting from Buyer's non-compliance with such law. Buyer shall not export or re-export technical data products supplied by Seller, directly or through others, or the direct product of such data, to the prescribed countries listed in Section 379.4 and associated or successor sections of the U.S. Export Administration Regulations unless properly authorized by the U.S. Government. Buyer's indemnification obligations shall survive the termination of this agreement.

16.13 Governing Law. The validity, construction, performance, and enforcement of this agreement shall be governed by the

substantive laws of the State of Maryland. The parties consent to the jurisdiction of the courts of the State of Maryland and agree that venue for any lawsuit shall be Howard County, Maryland.

16.14 Attorney's Fees. The prevailing party in any legal action brought by one party against the other shall be entitled, in addition to any other rights and remedies it may have, to reimbursement for its expenses incurred thereby, including court costs and reasonable attorney's fees.

16.15 Severability. The provisions of this agreement are severable and if any one or more such provisions are judicially determined to be illegal or otherwise unenforceable, in whole or in part, the remaining provisions or portions of this agreement shall nevertheless be binding on and enforceable by and between the parties hereto.

16.16 Entire Agreement. These Terms and Conditions constitute the entire agreement between the parties and supersede all prior agreements and understandings between them relating to the subject matter hereunder, and no modification of this agreement shall be binding on either party unless it is in writing and signed by both parties.

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ATTACHMENT A: APPLICABLE WARRANTY

The warranty provisions of paragraph 13.1 of these Terms and Conditions are hereby modified in scope and/or duration as follows:

Product/Service provided by COVEGA under this Contract:

Limitations on scope of warranty:

Limitations on duration of warranty: