



The Vane Brothers Companies

TERMS AND CONDITIONS

A. ACCEPTANCE:

1. "Buyer" is the party or entity issuing the purchase order to which these terms and conditions are attached and incorporated.
2. "Seller" is the party or entity who is the recipient of the purchase order.
3. This order is Buyer's offer to purchase the goods and/or services described in the associated purchase order from Seller. Buyer's placement of this order with Seller is expressly conditioned upon Seller's acceptance of all of the terms and conditions of purchase contained on or incorporated with this order.
4. Any additional or different terms or conditions which may appear in any communication from Seller are hereby expressly objected to, and shall not be effective or binding unless specifically agreed to in writing by Buyer's purchasing department, and no such additional or different terms or conditions in any printed form of Seller shall become part of this contract despite Buyer's acceptance of goods or services, unless such acceptance specifically recognizes and assents to their inclusions.
5. Any objection by Seller to the terms and conditions hereof shall be ineffective unless Buyer is advised in writing thereof within ten days of the date of this order.

B. IDENTIFICATION: All invoices, packages, shipping notices, instruction manuals and other written documents affecting this order shall contain the applicable order number. Packing lists shall be enclosed in each box or package shipped pursuant to this order, indicating the contents therein. Invoices will not be processed for payment until all items invoiced are received.

C. SHIPPING INSTRUCTIONS: All goods are to be shipped freight prepaid, F.O.B. destination, unless otherwise stated. Where Buyer has so authorized in writing, goods may be shipped F.O.B. shipping point, but Seller shall prepay all shipping charges, route the goods by the best-value common carrier, or the carrier specified, and list said charges as a separate item on Seller's invoice. Each invoice for shipping charges shall be accompanied by the original or a copy of the bill indicating that such charges have been paid. Buyer reserves the right to reject C.O.D. shipments. Seller shall not insure the goods for Buyer's account during shipment except upon Buyer's written request, or where the shipping mode is parcel post.

- D. **SPECIAL CHARGES:** Seller shall be responsible for the payment of all charges for handling, packaging, wrapping, bags, containers and related matters unless Buyer has assumed an express obligation therefore.
- E. **DELIVERY:** Time is of the essence, and this order may be terminated if delivery is not made or services are not performed by the date specified in the purchase order. No change in the scheduled delivery date or performance will be permitted without Buyer's prior written consent. No acceptance of goods or services after the scheduled delivery date will waive Buyer's rights with respect to such late delivery, nor shall it be deemed a waiver of future compliance with the terms hereof.
- F. **INVOICES:** Seller will remit invoices
by mail to: 2100 Frankfurst Avenue
Baltimore, MD 21226
Attention Accounts Payable
by email to: AP@vanebrothers.com
by fax to: (410) 631-7781
- Invoices remitted to other locations or directly to the requisitioner could result in delayed payment for which the buyer will not be liable.
- G. **PAYMENT:** Buyer will remit payment to Seller by mail or electronic transfer. Seller agrees not to deliver goods on a sight draft basis.
- H. **PRICES:** If price is not stated on the purchase order, it is agreed that the goods or services shall be billed at the price last quoted, or paid by a customer of Seller, or the prevailing market price, whichever is lower.
- I. **CASH DISCOUNT:** If Buyer is entitled to a cash discount, the period of computation thereof will commence on the date of acceptance or receipt of a correctly completed invoice, whichever is later. If an adjustment in payment is necessary due to damage, the cash discount period shall commence on the date on which an agreed adjustment of price is reached. If a cash discount is made part of the contract, but the invoice does not reflect the existence thereof, Buyer is entitled to a cash discount with the period commencing on the date Buyer determines that a cash discount applies.
- J. **TAXES:** Seller shall pay all taxes that may arise out of its sale of the goods and services to Buyer. Buyer agrees to pay applicable state sales or use taxes, or to provide Seller an exemption certificate.
- K. **ASSIGNMENT:** Seller shall not assign this contract, or the right to payment due hereunder, without Buyer's prior written consent.
- L. **LIENS, CLAIMS AND ENCUMBRANCES:** Seller warrants and represents that all the goods will, when delivered hereunder, be free and clear of all liens, claims or encumbrances of every kind.

- M. REJECTION:** All goods purchased hereunder are subject to Buyer's inspection and approval. Goods rejected by Buyer for whatever reason shall be held, transported and/or stored at Seller's sole expense. Seller shall promptly reimburse Buyer for any such expenses.
- N. DEFAULT:** Buyer may, subject to the provisions of paragraph "O", by written notice of default to Seller, cancel the whole or any part of this order, or exercise any other remedy provided Buyers of goods by law or in equity including any remedy under the Uniform Commercial Code, in any of the following circumstances:
1. If Seller fails to make delivery of the goods or to perform the services within the time specified or any extension thereof;
 2. If, in Buyer's good faith judgment, the Seller fails to perform any of the other provisions of this order or fails to make progress as to endanger performance of this order in accordance with its terms and does not cure such failure within a period of ten days, or such longer period as Buyer may authorize in writing, after receipt of notice from Buyer specifying such failure;
 3. Seller is in breach of any of the terms or conditions of this order; or
 4. If Seller becomes insolvent or makes an assignment for the benefit of creditors, or if there shall be instituted by or against Seller any proceeding under any bankruptcy, reorganization, arrangement, readjustment of debt or insolvency law of any jurisdiction or for the appointment of a receiver or trustee in respect to any of Seller's property and such proceeding is not dismissed or cured within 60 days.
- O. REMEDIES:** Not by way of limitation, the remedies of the parties include:
1. If Buyer cancels this order in whole or in part as provided in paragraph "M", Buyer may procure upon such terms and in such manner as Buyer may deem appropriate goods or services similar to those canceled and Seller shall be liable to Buyer for any excess costs for such similar supplies or services, provided that Seller shall continue the performance of this order to the extent not canceled under the provisions of this order.
 2. The rights and remedies of Buyer provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this order.
 3. The failure of the Buyer to insist upon strict performance of any of the terms of this order or to exercise any rights hereunder shall not be construed as a waiver of Buyer's rights.
 4. The Seller may be excused from performance under this order provided the Seller notifies the Buyer within ten days of discovery of any of the below named events:
 - a. Such events are, but not limited to, Acts of God, or of public enemy, Acts of the government with lawful jurisdiction over Seller in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and
 - b. The Seller's failure to perform is caused by default of a supplier or sub-contractor and if such default arises out of causes beyond the control of both the Seller and the supplier or sub-contractor and without the fault or negligence of either of them.
 - c. The Seller agrees to make a concerted effort to obtain supplies or services from other sources in time to meet required delivery schedule(s), if such events or causes named above cause a supplier default.

P. **WARRANTIES:** Seller warrants goods supplied and work or services performed under this order conform to specifications herein and are MERCHANTABLE and fit for the particular purposes for which goods are ordinarily employed.

1. Seller further warrants to the Buyer and to any third party ultimately using any item whether such third party is a customer of Buyer or not, that all items delivered under this order will be free from defects in material and workmanship and will conform to applicable specifications, drawings, samples and descriptions. If Seller is responsible for design of items, Seller warrants that all items delivered under this order will be suitable for use by Buyer, including installation by Buyer in its ultimate products. Buyer's written approval of designs furnished by Seller shall not relieve Seller of its obligations under this warranty.

2. Seller shall be liable for all damages both to Buyer and its customers incurred as a result of any defect or breach of warranty in any item covered by this order.

3. The foregoing express warranties shall be in addition to any warranty customarily made by Seller of its product and any implied warranties and shall be construed as conditions as well as warranties.

4. SELLER'S WARRANTY SHALL EXTEND FOR A PERIOD OF 12 MONTHS AFTER THE ITEM IS DELIVERED AND ACCEPTED BY BUYER AND APPLIED TO ITS INTENDED USE. Where Buyer incorporates that item into a product of Buyer to be delivered to its customer, Seller's obligation under this clause shall be for the benefit of Buyer's customer and shall extend to one year after application of the item to its intended use.

5. The warranties represented and covenants of parties hereto shall survive the delivery of the goods or completion of the work or services provided and be fully enforceable thereafter. Seller's warranty hereunder is part consideration for this order; any payment by Buyer hereunder is conditional upon this warranty remaining in effect, and no modifications or other change of this warranty shall be valid unless evidenced by buyer's written change order.

Q. **QUALITY STANDARDS:** If a special brand is listed in this order, the goods being purchased must meet the standard for quality, performance, and use of such brand. If Seller is willing to supply a product equivalent to the designated special brand, it must first provide Buyer with descriptive literature identifying its brand, including the quality, performance, and specifications therefor. If Buyer elects to accept goods purported to be equal to the special brand, the goods may be rejected and dealt with as provided in paragraph "M" hereof if such goods do not meet the standards of the special brand listed in this order.

R. **INSPECTION AND QUALITY CONTROL:**

1. All terms furnished under this order by Seller to Buyer shall be subject to inspection and tests by Buyer, or representatives of third party purchasing Buyer's product (User's Representative) in which items will be used. To the extent practicable inspection may be made at all times and places, including the period of manufacture and prior to acceptance.

2. If inspections or tests are made by Buyer or User's Representative on the premises of Seller (to included onboard Seller's vessel "Premises"), supplier or sub-contractor, Seller without additional charge shall provide all reasonable facilities and assistance for the safety and convenience of such inspectors in the performance of their duties. If inspection or test

is made at a point other than the Premises of Seller, supplier or sub-contractor, it shall be at the expense of Buyer except as otherwise provided in this order. In case of rejection Buyer shall not be liable for any reduction in value of samples used in connection with such inspection or test. All inspections and tests by Buyer shall be performed in such manner as to not unduly delay the work. Buyer reserves the right to charge Seller any additional cost to inspect and test when supplies are not ready at the time such inspection and test is requested by Seller or when re-inspection or re-test is necessitated by prior rejection. Inspection and acceptance or rejection of the supplies shall be made as promptly as practicable after delivery as may be specified herein, regardless of prior payment. Failure to inspect, accept or reject goods shall neither relieve Seller from responsibility for such supplies as are not in accordance with the order requirements nor impose liability on Buyer.

3. Seller shall provide and maintain inspection and quality control systems acceptable to Buyer covering the items furnished hereunder. Records of all inspection work by both Buyer and Seller shall be kept intact and made available upon request to the other party during the performance of this order and for six years following delivery under this order.

4. Without limiting the generality of paragraph "R.1.", the Seller agrees if a special production run is made, that the first item produced on this order is subject to first article acceptance prior to further fabrication. If the first piece submitted fails to meet the inspection acceptance requirements, a new first piece will be submitted for approval. This procedure shall be continued until an acceptable first article has been approved. First article acceptance shall be based on the requirements of the drawings, specifications, and purchase documents, as applicable. Acceptance of the first article shall not be considered acceptance of subsequent part production. The submission of a first article shall be accompanied by the physical data found by the supplier, the tool number used to produce the part(s), and, in the case of parts produced in molds, dies, etc. with more than one cavity, the Seller shall submit a first article from each cavity and identify the first article to indicate the cavity it represents.

5. Seller shall provide Buyer appropriate material certifications, including but not limited to, American Bureau of Shipping Inspection Certificates, material, physical, and/or chemical analysis certifications, OSHA/WISHA Material Safety Data Sheets, and U.S. Coast Guard acceptance certifications.

S. **INFRINGEMENTS:** Seller warrants that Buyer's purchase, installation, and/or use of goods covered hereby will not result in any claim of infringement, or actual infringement of any patent, trademark, copyright, franchise, or other intellectual property right. Seller shall indemnify and hold Buyer harmless from and against all claims, losses, expenses, damages, causes of action and liabilities of every kind and nature, including without limitation reasonable attorney's fees (without waiver of Seller's obligation to indemnify Buyer hereunder), arising from or out of any breach of the foregoing warranty.

T. **RISK OF LOSS:** Regardless of F.O.B. Point, Seller agrees to bear all risk of loss, injury, or destruction of goods and materials ordered herein which occur prior to acceptance by Buyer. No such loss, injury, or destruction shall release Seller from any obligations hereunder.

- U. **INDEMNIFICATION; HOLD HARMLESS:** Seller shall indemnify and hold Buyer harmless from and against all claims, losses, expenses, damages, causes of actions and liabilities of every kind and nature including without limitation reasonable attorney's fees, without waiver of Seller's obligation to indemnify Buyer hereunder, arising from or out of any alleged breach of any of Seller's obligations or warranties hereunder or from other acts or omissions of Seller, its officers, agents, employees, sub-contractors, and guests, howsoever caused, instituted by persons who purchase from Buyer or use product purchased from Seller.
- V. **OSHA/WISHA:** Seller shall comply with the conditions of the Federal Occupational Safety and Health Act of 1970 (OSHA), the Washington Industrial Safety and Health Act of 1973 (WISHA), as amended, and the standards and regulations issued hereunder, and certifies that all items furnished and purchased under this order will conform to and comply with such applicable standards and regulations.
- W. **SPECIAL, TOOLING, DRAWINGS AND SPECIFICATIONS:**
1. Seller is responsible for the protection, calibration, maintenance, and care (other than normal wear) of all tooling and equipment owned by Buyer. Said tooling or equipment shall be subject to surveillance inspection upon notice and shall be returned in an acceptable condition upon demand or notice.
 2. Except as otherwise specified in this order, any special tooling, including jigs, dies, fixtures, molds, patterns, special gauges, special test equipment and other items shall be furnished by and at the expense of Seller for the Buyer, shall be stamped or painted "Property of THE VANE BROTHERS COMPANY", and shall be stored separately when not in use. Special tooling shall be kept in good condition by Seller and when necessary replaced by Seller without expense to the Buyer. Title to special tooling shall be in Buyer, and all parts made from Buyer's special tooling are to be supplied to Buyer exclusively.
 3. Any drawings and specifications prepared by Seller are to become the property of Buyer and shall be marked "Property of THE VANE BROTHERS COMPANY", and shall be stored separately when not in use. Such drawings or specifications will be sent to THE VANE BROTHERS COMPANY, attention Purchasing Agent, when order is completed.
- X. **SERVICE OR INSTALLATION OF WORK:** In the event this order requires the performance of work on installation of goods by Seller upon any property or project of Buyer, the following conditions shall also be applicable:
1. Seller shall take precautions to protect all property and persons from damage or injury arising out of its work and shall comply with all fire, safety and other applicable regulations prescribed by any governmental agency and by Buyer and/or owner of the project upon which work is being performed, and shall be responsible for the observance thereof by all sub-contractors, employees, agents and representatives of Seller and its sub-contractors. Seller shall also obtain at its own expense and provide Buyer with proof of insurance coverage satisfactory to Buyer for workmen's compensation and property damage, public liability, personal injury, employer's liability and other applicable insurance.
 2. Seller shall keep the Premises and work free and clear of all mechanics' and materialmen's liens or claims; Seller shall promptly pay for all labor and materials, and if Seller fails to do so, Buyer without waiving any rights or remedies against Seller for or by

reason of such failure may, but without any obligation to do so, pay the same and deduct the amount of such payments from sums due Seller hereunder; and Buyer may withhold any payment to Seller until receiving such affidavits, waivers, and releases with respect to claims for labor and materials as Buyer may require.

3. The work shall remain at Seller's risk prior to written acceptance by Buyer and/or the owner of the project and Seller shall replace at its own expense all work damaged or destroyed by any cause whatsoever.

4. Seller shall observe and comply with, to the extent required by Buyer, the wages, hours and working conditions established by Buyer on the project or required of Buyer by an applicable labor agreement.

5. Seller shall act as an independent contractor and not as an employee, agent, or representative of Buyer.

6. Seller shall perform its work in accordance with the schedules and work programs established by Buyer and shall fully cooperate with Buyer and others engaged in work on the project so that the work on the entire project may be performed with the utmost speed, consistent with good practices. In case of conflict, Buyer may direct the necessary coordination.

7. Seller shall carry on its work so that the Premises shall at all times be clean, orderly and free from debris, and upon completion, shall remove all equipment and unused materials from the project, clean up all refuse and debris, and leave the site of the work clean, orderly and in good condition.

8. Seller shall require Seller's employees, agents, contractors or sub-contractors to abide by Buyer's Work and Safety rules when work or services are performed at Buyer's Premises. Buyer has the right to exclude personnel from Buyer's Premises who do not abide by such rules, and at Buyer's election, to declare a default under this order.

9. Seller is solely liable for its employees, agents, contractors or sub-contractors and their actions while on Buyer's Premises and the Seller indemnifies and will protect Buyer from all losses, claims, expenses, damages arising from or out of the presence or activity of Seller's employees while at Buyer's premises. This indemnification is to clarify paragraph "U".

- Y. **ADVERTISING:** No advertising or publicity matter having or containing any reference to Buyer or any of its staff members shall be made by Seller or anyone in Seller's behalf unless Seller has written consent of Buyer.

- Z. DISCLOSURE OF INFORMATION:** All data and information not already in the public domain, developed or disclosed during the life of this order, will be the property of the Buyer and will be classified in secrecy and confidence by the Seller. Seller will keep confidential all such data and information until it comes into the public domain or until Buyer's Purchasing Agent consents in writing to disclosure.
- AA. ATTORNEYS' FEES:** In any suit or action brought to enforce any term, condition, or covenant herein, or to recover damages arising from any breach of this contract, the losing party shall pay to the prevailing party reasonable attorneys' fees and all other costs and expenses which may be incurred by the prevailing party in any such suit or action, and in any reviews thereof and appeals therefrom.
- BB. LAW:** The laws of the State of Maryland shall govern this order, and the venue of any action brought hereunder must be in the state or federal courts located in the County of Baltimore, State of Maryland.
- CC. INTENDED USE:** Unless otherwise stated, the goods ordered are to have an intended usage in the manufacture, construction, modification, maintenance, repair and/or servicing of the company's products, vessels, and facilities.

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