



## TERMS & CONDITIONS

The accompanying purchase order ("PO") and these terms (collectively, the "Agreement") becomes a contract and the parties become bound by the terms hereof when VanTran Industries, Inc. ("Seller") and Buyer both execute and deliver the PO or Seller performs any work pursuant to the PO on behalf of Buyer. This Agreement contains the entire agreement of the parties and supersedes all prior or contemporaneous agreements between the parties with respect to the subject matter hereof. These Terms prevail over any of Buyer's general terms and conditions of purchase regardless of whether or when Buyer has submitted its purchase order or such terms. Fulfillment of Buyer's order does not constitute acceptance of any of Buyer's terms and conditions and does not serve to modify or amend these Terms.

1. Pricing. Unless otherwise provided in the PO, the price for goods shall be Seller's published price in effect at time of shipment (subject to next sentence). When a specified shipment date extends beyond 30 days from quoted lead time or when delays beyond Seller's control prevent production of an order within this period, Seller reserves the right to assess production cost impact on the published price and advise Seller in writing of any such changes in price. Buyer shall acknowledge new price by change order submission within [10] days after receipt of such new price notification or elect to cancel the applicable order per the terms of Section 9.
2. Production and Shipment Dates. For orders entered as hold for approval, quoted lead time is considered after approval and release to production and the shipment date will be entered as best available at the time of release. The expectation is that the approval and release to production shall be provided by Buyer within two (2) weeks of receipt of drawings. Should this approval and release to production be delayed by Buyer, Seller reserves the right to assess production cost impact on the published price and advise Buyer in writing of any such changes in price. Buyer shall acknowledge new price by change order submission within [10] days after receipt of such new price notification or elect to cancel the applicable order per the terms of Section 9. If orders go unreleased by Buyer for more than 180 days, Seller may cancel the order per terms Section 9.
3. Invoices/Taxes. Buyer shall pay all invoiced amounts due to Seller within 30 days from the date of Seller's invoice, unless the PO provides otherwise. Progress payments apply for orders \$200,000 and greater, as follows: 25% due at time of order acknowledgment, 25% due at time of order release and 50% due net 30 after shipment with approved line of credit. Buyer shall make all payments hereunder by wire transfer or check and in US dollars. Buyer shall pay interest on all late payments at the lesser of the rate of 2.5% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Buyer shall reimburse Seller for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees. In addition to all other remedies available under these terms or at law (which Seller does not waive by the exercise of any rights hereunder), Seller shall be entitled to suspend the delivery of any goods if Buyer fails to pay any amounts when due hereunder and such failure continues for 30 days following written notice thereof. Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Seller, whether relating to Seller's breach, bankruptcy, or otherwise.

All prices are exclusive of all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any governmental authority on any amounts payable by Buyer. Buyer shall be responsible for all such charges, costs, and taxes, if applicable; provided that Buyer shall not be responsible for any taxes imposed on, or with respect to, Seller's income, revenues, gross receipts, personnel, or real or personal property or other assets.

4. Title/Risk of Loss. Title to, and risk of loss of, the goods shall pass from Seller to Buyer upon meeting shipment terms as specified on the face of the PO. Unless otherwise indicated on the face of the PO, all goods delivered shall be FCA Seller location. Seller shall not be liable for any delays, loss, or damage in transit. Buyer shall be responsible for all off loading costs and provide equipment and labor reasonably suited for receipt of the goods at the applicable delivery point.
5. Confidentiality. All non-public, confidential or proprietary information of Seller, including but not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts, or rebates, disclosed by Seller to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" in connection with this Agreement is confidential, solely for the use of performing this Agreement and may not be disclosed or copied unless authorized in advance by Seller in writing. Upon Seller's request, Buyer shall promptly return all documents and other materials received from Seller. Seller shall be entitled to injunctive relief for any violation of this section. This section does not apply to information that is: (a) in the public domain; (b) known to Buyer at the time of disclosure; or (c) rightfully obtained by Buyer on a non-confidential basis from a third party.



6. Security Interest. As collateral security for the payment of the purchase price of the goods, Buyer hereby grants to Seller a lien on and security interest in and to all of the right, title, and interest of Buyer in, to, and under the goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing.. The security interest granted under this provision constitutes a purchase money security interest under the Texas Uniform Commercial Code and shall be released upon full payment of the applicable goods
  
7. Limited Warranty.
  - a. Seller warrants to Buyer that the goods shall be free of any material defect in workmanship or material which may develop when operating under normal load, usage, conditions, and competent supervision for a period of twelve (12) months from date of energization or eighteen (18) months from date of shipment, whichever occurs first (the "Warranty Period").
  - b. EXCEPT FOR THE WARRANTY SET FORTH IN SECTION 7(a), SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS, INCLUDING ANY (i) WARRANTY OF MERCHANTABILITY; OR (ii) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; OR (iii) WARRANTY OF TITLE; OR (iv) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.
  - c. Seller shall not be liable for a breach of the warranty set forth in Section 7(a) unless: (i) Buyer gives written notice of the defect, reasonably described, to Seller within 14 days of the time when Buyer discovers or ought to have discovered the defect; (ii) Seller is given a reasonable opportunity after receiving the notice to examine such goods and Buyer (if requested to do so by Seller) returns such goods to Seller's place of business at Seller's cost for the examination to take place there; and (iii) Seller reasonably verifies Buyer's claim that the goods are defective.
  - d. Seller shall not be liable for a breach of the warranty set forth in Section 7(a) if: (i) Buyer makes any further use of such goods after giving such notice; (ii) the defect arises because Buyer failed to follow Seller's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the goods; or (iii) Buyer alters or repairs such goods without the prior written consent of Seller.
  - e. Subject to Section 7(c) and Section 7(d) above, with respect to any such goods during the Warranty Period, Seller shall, in its sole discretion, either: (i) repair or replace such goods (or the defective part) per Seller's written instructions; if Seller so requests, Buyer shall, at Buyer's expense, return such goods FCA Seller location or (ii) credit or refund the price of such goods at the pro rata contract rate provided that, if Seller so requests, Buyer shall, at Seller's expense, return such goods FCA Seller location. Seller will not be liable for any expenses incurred in removal and re-installation or transportation of goods.
  - f. THE REMEDIES SET FORTH IN SECTION 7(e) SHALL BE BUYER'S SOLE AND EXCLUSIVE REMEDY AND SELLER'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN SECTION 7(a).
  
8. Limitation of Liability.
  - a. IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.
  - b. IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO SELLER FOR THE GOODS SOLD HEREUNDER.
  - c. The limitation of liability set forth in Section 8(b) above shall not apply to liability resulting from Seller's gross negligence or willful misconduct.



9. **Termination.** In addition to any remedies that may be provided under these terms, Seller may terminate this Agreement with immediate effect upon written notice to Buyer, if Buyer: (i) fails to pay any amount when due under this Agreement and such failure continues for ten (10) days after Buyer's receipt of written notice of nonpayment; (ii) has not otherwise performed or complied with any of these terms, in whole or in part; (iii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors, or (iv) fails to release to production more than 180 days after drawing submittal incurring a 25% of the price of goods termination fee.
10. **Buyer Cancellation for Convenience.** Buyer may cancel any order by delivery of written notice to Seller and the payment of a fee as follows: (a) if the PO is cancelled by Buyer after the order acknowledgment - 5% of the price of the goods ; (b) if the PO is cancelled by Buyer after drawing submission - 25% of the price of the goods; (c) if the PO is cancelled by Buyer after order release to production - 50% of the price of the goods; and (d) if the PO is cancelled by Buyer after commencement of production - 100% of the price of the goods.
11. **Waiver.** No waiver by Seller of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Seller. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement operates or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power, or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.
12. **Force Majeure.** No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations of Buyer to make payments to Seller hereunder), when and to the extent such failure or delay is caused by or results from acts beyond the impacted party's ("Impacted Party") reasonable control, including, without limitation, the following force majeure events ("Force Majeure Event(s)"): (a) acts of God; (b) flood, fire, earthquake, epidemics or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order, law, or actions; (e) embargoes or blockades in effect on or after the date of this Agreement; (f) national or regional emergency; (g) strikes, labor stoppages or slowdowns, or other industrial disturbances; (h) shortage of adequate power or transportation facilities; and (i) other similar events beyond the reasonable control of the Impacted Party. The Impacted Party shall give notice within 10 days of the Force Majeure Event to the other party, stating the period of time the occurrence is expected to continue. The Impacted Party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The Impacted Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. In the event that the Impacted Party's failure or delay remains uncured for a period of 20 consecutive days following written notice given by it under this Section 12, the other party may thereafter terminate this Agreement upon 30 days written notice.
13. **Assignment.** Unless provided otherwise in the PO. Buyer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Seller. Any purported assignment or delegation in violation of this section is null and void. No assignment or delegation relieves Buyer of any of its obligations under this Agreement.
14. **Relationship of the Parties.** The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.
15. **No Third-Party Beneficiaries.** This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of these Terms.
16. **Governing Law/Jurisdiction.** All matters arising out of or relating to this Agreement are governed by and construed in accordance with the internal laws of the State of Texas without giving effect to any choice or conflict of law provision or rule (whether of the State of Texas or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of Texas. Any legal suit, action, or proceeding arising out of or relating to this Agreement shall be instituted in the federal courts of the United States of America or the courts of the State of Texas in each case located in Waco, McLennan County, Texas, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.



17. Notices. All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "Notice") shall be in writing and addressed to the parties at the addresses set forth on the face of the PO or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission), or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this section.
18. Severability. If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.
19. Survival. Provisions of these terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Agreement.