

ISO 9001 Registered Company

Vanner Inc. • 4282 Reynolds Drive • Hilliard, Ohio 43026  
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www.vanner.comJanuary 31, 2015  
A917279-C**VANNER, INC.  
TERMS AND CONDITIONS OF PURCHASE**

The following terms and conditions of purchase as they appear at [www.vanner.com](http://www.vanner.com) at the time of purchase ("Terms and Conditions"), govern the purchase of all materials, goods ("Goods") or services ("Services") purchased by Vanner, Inc. (hereinafter called "Buyer") from any vendor or seller thereof (hereinafter called "Seller"), and apply notwithstanding any conflicting, contrary, or additional terms and conditions in any quotation, order acknowledgment, confirmation form, acceptance invoice, bill of lading, or other document, or communication from Seller. By selling, shipping, or performing the Goods or Services, as the case may be, Seller confirms that the Terms and Conditions apply to Buyer's purchase of the Goods or Services, as the case may be. The Terms and Conditions constitute all of the terms of this Agreement between Buyer and Seller. No course of prior dealings or performance between the parties or usage in the trade shall be relevant to supplement or explain any terms used in this Agreement. No modification or waiver of these conditions of sale shall be binding upon Buyer unless approved by an officer of Buyer in writing. **ANY CONFLICTING WARRANTIES, TERMS AND CONDITIONS IN THE INVOICE, ORDER ACKNOWLEDGMENT, QUOTATION, BID, OR ANY OTHER OF SELLER'S DOCUMENTS SHALL BE CONSIDERED MATERIAL ALTERATIONS, WILL BE OF NO BINDING EFFECT, AND ARE HEREBY SPECIFICALLY OBJECTED TO AND REJECTED BY BUYER.** Each purchase order issued by Buyer, together with the agreements, specifications, or other documents of Buyer noted herein, if any, and including these Terms and Conditions (collectively, such purchase order and such additional documents are herein referred to as an "Order"), constitutes the COMPLETE AND FINAL AGREEMENT of Buyer and Seller with respect to the purchase of Goods and Services contemplated by such Order.

**1. AGREEMENT.** Any Order becomes a contract subject to the Terms and Conditions when accepted by Seller via a formal written acknowledgement to Buyer or by commencement of any of the work called for under an Order. No change in, modification of, or revision of any Order or the Terms and Conditions, shall be valid unless agreed to in writing signed by an officer of Buyer. The failure of Buyer to actively reject orally or in writing, any conflicting or contradictory terms contained in any document forwarded by Seller to Buyer subsequent to a purchase order shall not be deemed to be an assent to such terms.

**2. PRICE & TAXES.** If a specific price for the Goods or Services has been quoted to Buyer by a representative or agent of Seller or if a price previously established by Seller has been set forth for the Goods or Services on the face of an Order, such price shall be the price of the Goods or Services contemplated by such Order and the full extent of Buyer's liability for the Goods or Services, unless a different price is agreed to in writing by an officer of Buyer. Seller warrants that the prices for the Goods or Services are not less favorable than those currently extended to any other customer for the same or like Services or same or like Goods in equal or less quantities. In the event Seller establishes or offers a lower price for the sale of such Services or Goods in such quantities, either generally or for any one sale to any other customer, from the date of acceptance of the Order to the date the Goods or Services are invoiced to Buyer, Seller agrees to reduce the prices hereof correspondingly. All prices are stated in United States dollars unless otherwise indicated. Seller's prices shall exclude any Federal, state or local sales, use or excise taxes levied upon, or measured by the sale, the sales price, or use of the Goods or Services, as the case may be. All such taxes, lawfully applicable, shall be listed separately on Seller's invoice. If such applicable taxes are not separately listed, Seller assumes responsibility for the payment of them, and shall indemnify and hold Buyer harmless from any and all liability in connection with such taxes. Tax exemption certificates or other evidence of exemption, furnished by Buyer, shall be accepted by Seller in lieu of such taxes.

**3. DELIVERY.** All Goods shall be shipped to Buyer F.O.B. Buyer's location (the "FOB Point"), or to such other location as the parties hereto may agree to in writing from time to time. Unless otherwise agreed to in writing in advance by an officer of Buyer, all charges for packing, crating, hauling, storage, and transportation to the FOB Point are included in the purchase price. All shipments must be accompanied by an itemized packing slip bearing Buyer's order number and part number. Each container must be marked to show Buyer's order number. If the Goods are not packaged, marked, shipped, and routed in accordance with Buyer's direction and the instructions set out in this Order, Seller shall pay to Buyer any excess cost incurred by Buyer thereby.

**4. EXTRA CHARGES.** No additional charges of any kind, including charges for boxing, packing, or cartage, taxes, import or export duties, excises, or other extras, will be allowed unless specifically agreed to in writing in advance by an officer of Buyer.

**5. TIME IS OF THE ESSENCE.** Time is of the essence in the performance of Seller's obligations hereunder and Buyer is relying upon timely performance by Seller. Deliveries are to be made both in quantities and at times specified by Buyer. Buyer reserves the right at any time to cancel and void an Order or any part thereof without liability if delivery is not made within the time specified by Buyer, which is of the essence. Buyer's acceptance of Seller's late performance shall not be deemed a waiver of this provision.

**6. TITLE AND RISK OF LOSS.** Except as otherwise expressly provided herein, title to and the risk of loss on all Goods shipped by Seller to Buyer shall not pass to Buyer until Buyer's inspection and acceptance of such Goods at the FOB Point.

**7. ACCEPTANCE, INSPECTION & TEST.** All Goods shall be received and all Services shall be performed subject to Buyer's inspection and acceptance or rejection. Inspection and test of the Goods and Services by Buyer may at Buyer's option be made at Seller's plant and/or the FOB Point. Acceptance of all or any part of the Goods or Services by Buyer shall not relieve Seller from any of its obligations and warranties hereunder, nor shall acceptance of any part of an Order bind Buyer to accept future shipments or Services or deprive Buyer of any right which it may have to return Goods already accepted or seek damages or remedial performance for Services already performed. Acceptance of all or any part of an Order shall not be deemed a waiver of Buyer's right either to cancel all or any part of an Order or to return all or any portion of the Goods because of failure to conform to such Order or by reason of defects, latent or patent, or other breach of warranty, or to make any claim for damages, suffered by Buyer as a result of any default of Seller or Seller's products or performance. In no event shall payment be deemed to constitute acceptance.

In case any of the Goods is found to be defective or otherwise not in conformity with the requirements of an Order, Buyer shall have the right to reject the same or require that such Goods be corrected or replaced promptly with satisfactory Goods. If Buyer so rejects the Goods or if Seller, when requested by Buyer, fails to proceed promptly with the replacement or correction thereof, Buyer may either cancel the Order and in addition, may cancel the then remaining balance of such Order, or may replace or correct such Goods and, in either event, may charge Seller the cost of replacement, correction, and all other damages incurred by Buyer thereby. Rejected, defective Goods or rejected Goods not in accordance with Buyers specifications shall be held for Seller's instruction and at Seller's risk, and if Seller so directs, shall be returned at Seller's expense. Unless Buyer, at its option notifies Seller to the contrary, no Goods returned as defective shall be replaced without a new order. Any payment for such defective Goods shall be refunded by Seller unless Seller promptly corrects or replaces the same at its expense. Return of any defective Goods by Buyer shall not be deemed a waiver of any right or remedy which Buyer may have as a result of or in connection with the existence of such defect or defects.

**8. PAYMENT.** Unless otherwise agreed to in writing in advance by an officer of Buyer, invoices shall be paid within sixty (60) days after the receipt of the invoice or delivery of Goods or performance of Services, as the case may be, whichever is later. C.O.D. shipments will not be accepted.

**9. WARRANTIES.** Seller warrants that the Goods, including material and work, furnished hereunder shall be of the highest grade and quality unless otherwise specified by Buyer in writing; shall not be less than merchantable and fit for the particular purpose(s) known by or disclosed to Seller; shall be free from defects in material and workmanship; shall meet specifications, drawings, or standards agreed upon, or samples submitted, or approved by Buyer; and shall conform to any referenced additional documents. Additionally, Buyer shall have the right to all Buyer's remedies and Seller's warranties to the fullest extent provided under the Uniform Commercial Code. All warranties and remedies shall survive inspection, tests, acceptance and payment.

Seller further warrants that all Services shall be performed in a professional and workmanlike manner with the degree of skill and care that is required by current good and sound professional standards and procedures. Seller further represents and warrants that the Services shall be completed in accordance with applicable specifications and shall be correct and appropriate for the purposes contemplated in the Order. Seller represents and warrants that Seller's performance under an Order shall not conflict with, or be prohibited in any way by, any other agreement or statutory restriction to which Seller is bound.

Seller warrants that the Goods and Services shall comply with all applicable federal, state and local laws and regulations and shall be in compliance with all standards and agreements incorporated and made a part of the Order. Seller shall indemnify and hold Buyer harmless from any costs, loss, or liability resulting from Seller's failure of compliance. In the event that any Goods or Services are not in compliance with any federal, state or local law, or regulation or not in compliance with any agreement or standard incorporated herein, now existing or hereafter enacted or amended, or are otherwise defective hereunder, Buyer may (at Buyer's option) return the defective Goods to Seller who shall refund to Buyer its cost, including all freight charges, or repair, correct, or replace the defective Goods or Services at Seller's cost and expense. Payment by Buyer shall not constitute an acceptance of Goods or Services or a waiver of any rights of Buyer hereunder. All warranties granted hereunder shall extend to Buyer, its successors, customers and other users of this material or equipment.

**10. INDEMNIFICATION.** Seller agrees to indemnify, save, and hold harmless Buyer and all of Buyer's affiliates, officers, directors, employees, and agents from and against any and all loss, damage, cost, charges, or expenses, or claims for same which Buyer may suffer or sustain or be in any way subjected to on account of injury to, or death of, any persons, or damage to or loss of property arising out of any act or omission by Seller, or performance of an Order by Seller, its employees, agents, or representatives, or the receipt, handling, storage, use or sale of the Goods by Buyer or its customers.

**11. EXCESS GOODS.** Goods in excess of those specified need not be accepted by Buyer and any such Goods not accepted will be held at Seller's risk. Buyer shall have no liability for payment for material or items delivered to Buyer which are in excess of quantities specified. Buyer may, and at Seller's direction shall, return such Goods at Seller's risk, and all transportation charges, both and from the original destination, shall be paid by Seller.

**12. CHANGES.** Buyer reserves the right at any time to make written changes in any of the following: (a) specifications, drawings, and data incorporated in this contract where the terms to be furnished are to be special manufactured for Buyer, (b) methods of shipment or packing, (c) place of delivery, (d) time of delivery, (e) manner of deliver, and (f) requested quantities. If any such change causes an increase or decrease in the cost or the time required for performance of this contract, an equitable adjustment shall be made in the contract price or delivery schedule or both. Any claim by Seller for adjustment under this clause must be approved by an officer of Buyer in writing before Seller proceeds with such change. Price increases shall not be binding on Buyer unless

evidenced by a purchase or change notice or revision issued and signed by an officer of Buyer.

Buyer shall have the right by written notice (including an electronic writing or notification) to cancel or suspend from time to time the Goods and Services, in whole or in part, to be furnished by Seller hereunder. Upon the receipt of such notice, Seller shall immediately comply with the notice and adjust operations in connection with the Order accordingly and take any necessary action to protect property in Seller's possession in which Buyer has or may acquire an interest. All costs and expenses relating to the Order and incurred by Seller subsequent to the receipt of such notice, which would not have been incurred if Seller had complied with such notice, shall be the sole responsibility of Seller. In the event of cancellation of an Order, Buyer shall be responsible and liable only for the price of Goods accepted prior to such notice plus the actual and reasonable costs incurred by Seller prior to notice of cancellation with respect to the Goods cancelled. In the event of suspension of an Order, Buyer shall be responsible and liable only for the price of Goods eventually accepted. Any increase in the price of such Goods shall be subject to the prior written approval of an officer of Buyer.

In the event of any cancellation, suspension or modification of an Order, Buyer shall not be responsible or liable for any costs of production, processing, or shipping of Goods apart from the price of Goods accepted if such costs represent a portion of and are included in the price of such accepted Goods.

In the event of any cancellation, suspension, or modification of an Order, Buyer shall be responsible and only for the price of Services performed prior to such notice plus the actual and reasonable costs incurred by Seller prior to notice of cancellation with respect to the Services cancelled.

In the event of any cancellation, suspension, or modification of an Order, Seller shall not be entitled to, nor shall Buyer be responsible or liable for, anticipatory profits or consequential damages.

**13. DEFAULT.** Buyer reserves the right, by written notice (including an electronic writing or notification), to cancel any Order without liability to Buyer in the event of, (a) insolvency of Seller or any controlling affiliate of Seller, (b) the filing by Seller or any controlling affiliate of Seller of a voluntary petition under title 11 of the United States Code, (c) the filing of an involuntary petition to have Seller or any controlling affiliate thereof declared bankrupt, (d) the appointment of a Receiver or Trustee for Seller or any controlling affiliate thereof, or (e) the execution by Seller or any controlling affiliate thereof of an Assignment for the Benefit of Creditors. If Seller fails to perform, or breaches any of the terms of an Order, Buyer reserves the right, immediately upon such failure of performance or breach, and without any liability to Buyer (a) to cancel any and all Orders then outstanding in whole or in part by written notice (including an electronic writing or notification) to Seller, or (b) after notifying Seller of such failure or breach and of Buyer's intent to exercise such right, to obtain the Goods under any outstanding Orders from another source, with any excess costs resulting therefrom, chargeable to Seller. Seller shall be liable for Buyer's damages in connection with such breach or failure to perform including consequential damages reasonably foreseeable by Seller or of which Seller was apprised by Buyer.

**14. INTELLECTUAL PROPERTY INDEMNIFICATION.** Except when Buyer supplies all specifications for the goods, Seller agrees to hold Buyer, its successors, assigns, customers and users harmless from loss and/or liability of any nature of kind arising out of or existing because of the infringement or alleged infringement of any patent, copyright, or trademark for or on account of the manufacture, sale, or use of any Goods furnished hereunder. Buyer shall notify Seller in writing (including an electronic writing or notification) of any suit filed against it or their customers, on account of any such infringement or alleged infringement, and at Seller's request shall give Seller control of the defense of such suit, insofar as Buyer has the authority to do so, and information and assistance for the same, all at Seller's expense. Buyer and the party against whom suit is brought, may be represented by their own counsel in any such suit. Furthermore, in the event that Buyer should be enjoined in such suit or proceeding from using any part of the Goods delivered hereunder, Seller, at its option, shall promptly either: (a) secure termination of the injunction or liability; or (b) replace said Goods with non-infringing Goods or modify them to become non-infringing, all at Seller's expense. The provisions of this paragraph shall not apply to Buyer's use of any of the Goods delivered hereunder in combination with other materials or in the practice of any process, or to infringement by reason of such use.

**15. PROPRIETARY RIGHTS.** All technical information in the nature of design blueprints, specifications, engineering data for production, product know how, or manufacturing technology which is supplied to Seller by Buyer to facilitate or assist in the performance of this contract shall, unless otherwise agreed, be considered and kept confidential at all times during the duration of this Agreement and thereafter by Seller. Upon completion, cancellation, or termination of an Order, Seller shall return all proprietary information submitted by Buyer.

**16. BUYER'S PROPERTY.** Any and all job specific drawings, software programs, tools, dies, patterns, specialty equipment, or information created and specifically paid for by Buyer under an Order shall be the property of Buyer, used only to complete Buyer's orders, and returned to Buyer when no longer required hereunder. Unless otherwise agreed, Seller, at its expense, shall insure all such items for the reasonable value thereof against loss or damage of any kind.

**17. COMPLIANCE WITH LAWS.** Seller shall, in the performance of work under an Order, fully comply with all applicable Federal, State, and local laws, ordinances, and regulations, and shall indemnify and hold Buyer harmless from any costs, loss, or liability resulting from Seller's failure of compliance.

**18. REMEDIES.** The remedies provided Buyer herein shall be cumulative and in addition to any other remedies provided by law or equity. A waiver of a breach of any provision hereunder shall not constitute a waiver of any other breach.

**19. SET-OFF.** Buyer may at all times set-off any amount owing from Buyer to Seller or to any of Seller's affiliated companies against any amount payable in connection with an Order by Buyer.

**20. ADVERTISING.** Seller shall not, without first obtaining the written consent of an officer of Buyer, in any manner, advertise, publish, or convey by word of mouth the fact that Seller has contracted to furnish Buyer the material herein ordered.

**21. NOTICE.** Notice given hereunder shall be effective upon receipt and in no event shall be effective later than three days postage, prepaid, if by mail; twenty-four hours after sending by telegraph, facsimile (fax), or electronic mail (e-mail); at the time shown on a confirmed telecopy message; or at the time of delivery if personally delivered.

**22. WAIVER.** Buyer's failure to insist on Seller's strict performance of the Terms and Conditions shall not be construed as Buyer's waiver for performance in the future.

**23. APPLICABLE LAW.** The contract resulting from the acceptance of an Order or commencement of any of the work called for under an Order shall be governed by and construed according to the laws of the State of Ohio.

**24. ASSIGNMENT.** Seller shall not assign, transfer, or subcontract this order or any interest therein or monies payable thereunder without the written consent of Buyer, and any assignment, transfer, or subcontract made without such consent shall be null and void.

**25. FORCE MAJEURE.** Either Buyer or Seller may suspend performance during the occurrence of an excusable delay, which shall mean and include any delay not occasioned by the fault or negligence of the delayed party and which results from the acts of God or public enemy, restrictions, prohibitions, priorities, or allocations imposed by governmental authority, embargoes, floods, fires, typhoons, earthquakes, epidemics, unusually severe weather, delays of similar nature or governmental causes, and strikes or labor disputes (of or involving the delayed party's employees only). Excusable delays do not include lockout, shortage of labor, lack of or inability to obtain raw materials, fuel, or supplies or any other industrial disturbance. In the event that a force majeure causes a reduction, rather than elimination, of Seller's ability to manufacture, supply, or otherwise produce Goods or Services hereunder, then at Buyer's election, exercised by written notice (including an electronic writing or notification) to Seller, Seller's obligation to supply Goods or Services to Buyer shall continue and such reduced production shall be shared among Seller's customers who purchase the Goods or Services (including Buyer) pro rata in proportion to their respective dollar purchases as of the first day of the period in which the force majeure came into effect.

**26. LIMITATION OF LIABILITY.** TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW, (A) THE INDEMNIFICATION OBLIGATIONS AND LIMITATIONS IN AN ORDER APPLY REGARDLESS OF WHETHER A CLAIM IS IN CONTRACT, TORT (INCLUDING BUYER'S NEGLIGENCE, GROSS NEGLIGENCE, AND WILLFUL MISCONDUCT), OR OTHERWISE; (B) BUYER'S ENTIRE LIABILITY FOR ALL CLAIMS ARISING OUT OF OR RELATING TO THE GOODS AND SERVICES OF AN ORDER SHALL NOT EXCEED THE PRICE PAID BY BUYER TO SELLER FOR THE GOODS AND SERVICES, AS THE CASE MAY BE, GIVING RISE TO THE CLAIM; AND (C) BUYER SHALL NOT BE LIABLE FOR ANY SPECIAL DAMAGES, CONSEQUENTIAL DAMAGES, INDIRECT DAMAGES, INCIDENTAL DAMAGES,

STATUTORY DAMAGES, LIQUIDATED DAMAGES, EXEMPLARY DAMAGES, LOSS OF PROFITS, LOSS OF REVENUE, OR LOSS OF USE, EVEN IF INFORMED OF THE POSSIBILITY OF SUCH DAMAGES.

**27. COMPLETE AGREEMENT.** This Agreement sets forth the sole and entire agreement between the parties regarding the sale of the Goods or Services herein and supersedes any and all prior or contemporaneous oral and written agreements between them regarding the same.

**28. SEVERABILITY.** If any term or provision of this Agreement or the application thereof shall be deemed invalid or unenforceable, the remaining portions shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.

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