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# Van-Am Tool and Engineering, LLC

5025 Easton Road  
St. Joseph, MO 64507

## Van-Am Defense Systems

504 1<sup>st</sup> Street  
Waverly, IA 50677

### Van-Am Sales Terms and Conditions

#### DEFINITIONS

**Buyer** – the receiver of Products.

**Order** – any document (including but not limited to a Purchase Agreement, Purchase Order, Adoption Agreement, Blanket Order, Release, GTA, or LTA) that incorporates by reference these Terms and Conditions.

**Product** – any product or service specified in an Order to be delivered by Seller to Buyer under these Terms and Conditions.

**Quotation** – any quotation issued by Seller to Buyer with respect to the sale of Products.

**RFQ** – any request for quotations submitted by Buyer to Seller.

**Seller** – Van-Am Tool & Engineering, LLC, having its principal place of business at 5025 Easton Road, St. Joseph, MO 64507; or Van-Am Defense Systems, having its principal place of business at 504 1st Street, Waverly, IA 50677.

**Terms and Conditions** – the terms and conditions set forth herein.

**Van-Am** – Van-Am Tool & Engineering, LLC and Van-Am Defense Systems as a whole.

**AS9100D** – The current revision of the Aerospace Quality Management System standard.

**Nonconforming Product** – Any Product that does not meet the requirements of the accepted Order, drawings, specifications, or Van-Am's QMS per QP 8.7-Control of Nonconforming Outputs.

**Special Processes / Critical Items / Key Characteristics** – As defined in QP 8.1.1-Operational Risk Management and QP 8.5.1-Control of Production and Service Provision.

#### 1. APPLICABILITY

- a) These Terms and Conditions, together with any Quotation, comprise the entire agreement between Buyer and Seller with respect to the sale of Products and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties.
- b) These Terms and Conditions prevail over any of Buyer's terms and conditions of purchase.
- c) 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 and Conditions.
- d) These Terms and Conditions are subject to Van-Am's Quality Management System per the QM 1-Quality Manual and shall be reviewed in accordance with QP 8.2-Requirements for Products and Services prior to acceptance of any Order.
- e) All Quotations that reference this document are governed by all standard clauses in these Terms and Conditions.
- f) When a Quotation notes special clauses, the standard clauses of these Terms and Conditions apply as well as those special clauses specifically noted in a Quotation, and, in the event there is a conflict between the special clauses set forth in a



Quotation and the standard clauses set forth in these Terms and Conditions, the special clauses set forth in a Quotation shall govern.

- g) Notwithstanding anything to the contrary, contained in these Terms and Conditions or any Quotation, Seller may, from time to time, amend these Terms and Conditions without the consent of Buyer provided that such changes do not materially affect the Product prices or any performance dates set forth in any Quotation submitted to Buyer prior to such amendment.

## 2. ACCEPTANCE OF ORDER BY SELLER

- a) All Orders pursuant to a Quotation are subject to acceptance by Seller.
- b) Acceptance of Orders must be made in writing by Seller to Buyer and must include the term "accept".
- c) If Seller receives an Order, Seller may acknowledge receipt of the document, but such acknowledgment does not indicate Seller's acceptance of the Order.
- d) If Seller does not accept the Order in writing or provide written notice that it has commenced performance within 10 calendar days of Seller's receipt of an Order, such Order will lapse.
- e) Seller is bound by all U.S. laws, export regulations, restrictions, trade embargoes, etc. ("U.S. Laws"); therefore, any Order by a non-U.S. Buyer to whom such sale is prohibited by such U.S. Laws, or any Order whose fulfillment by Buyer would violate such U.S. Laws, will not be valid and will be deemed rejected by Seller without any liability whatsoever to Seller.
- f) Orders after 12 PM will be considered received on the next business day.

## 3. QUOTE VALIDITY AND ORDERS

- a) Price and lead times specified in a Quotation are valid for the time period specified therein.
- b) If no such time period is specified in a Quotation, price and lead times are valid for 30 days after the date the Quotation is submitted.
- c) Seller's Quotation, price and lead times for expedited Orders are valid for 3 days.

## 4. LEAD TIME

- a) All lead times noted in a Quotation begin after Seller's receipt of an Order from Buyer and all engineering documents, including drawings, models, specifications, quality manuals, approved supplier list, and all documents necessary to manufacture specified Product.

## 5. PRICES

- a) Buyer shall purchase the Products from Seller at the price(s) (the "Price(s)") set forth in a Quotation.
- b) All Price(s) 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 (collectively, "Buyer Taxes and Charges"), 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 of Seller.
- c) If Seller must pay any Buyer Taxes and Charges, Buyer shall reimburse Seller immediately.
- d) Quotations are based on the present cost of materials and outside processing at the time the Quotation is submitted.
- e) Buyer is responsible for paying for any increase in cost of materials and outside processing purchased by Seller following the date the Quotation is submitted.

## 6. PAYMENT TERMS

- a) Unless otherwise set forth in the invoice issued by Seller to Buyer (the "Invoice"), Buyer shall pay all invoiced amounts due to Seller within 30 days from the date of the shipment.
- b) Buyer shall pay Seller interest on all late payments at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly.
- c) Buyer shall reimburse Seller for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees.
- d) Acceptance of any partial payment shall not constitute a waiver of Seller's right to payment in full amounts owing from Buyer or the waiver of any breach of these Terms and Conditions or any Quotation.
- e) Payment will be made in U.S. dollars and in immediately available funds.



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- f) Seller, without liability, reserves the right to suspend the delivery of any Product or any further performance under these Terms and Conditions or the applicable Quotation or otherwise assert alternative payment terms, in the event payment is not made when due, or if, in Seller's sole discretion, Buyer's credit is or becomes unsatisfactory.
  - g) Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Seller.
  - h) Warranty conditioned on payment: Buyer's warranty rights under these Terms and Conditions are expressly conditioned on Buyer's timely payment of all undisputed amounts due to Seller.
  - i) If Buyer is delinquent in payment, Seller may suspend warranty performance, including evaluation, troubleshooting, return processing, repair, replacement, or technical support, until Buyer's account is brought current.
  - j) To the maximum extent permitted by applicable law, no warranty claim may be asserted while any undisputed invoice is past due.
  - k) This clause shall not restrict any non-waivable legal obligations or safety-related actions required by applicable law.

#### **7. TITLE AND RISK OF LOSS**

- a) Title and risk of loss pass to Buyer upon delivery of the Products at the Domestic Delivery Point or the International Delivery Point, as applicable.

#### **8. ENGINEERING CHARGES**

- a) Buyer agrees to accept responsibility for any loss of production time when Seller is on hold waiting for a response from Buyer, if the issue involves a Buyer engineering problem (such as a drawing or specification error, a document that is unclear or a drawing change).
- b) The cost of the downtime will be negotiated between Seller and Buyer but typically the charges would be equal to the number of hours the machine is down multiplied by Seller's current shop rate.
- c) If the response from Buyer takes more than one day, Seller reserves the right to remove Buyer's job and replace it with another job; Buyer's job will be placed on hold and will need to be rescheduled out by agreement between Seller and Buyer.
- d) Buyers shall be responsible for the costs of removing the set-up and subsequent re-set up of the job.
- e) Set-up charges typically would be equal to the number of hours it takes to do the set-up multiplied by Seller's current shop rate.
- f) Engineering changes include modifications to standard FAI AS9102 format.
- g) Additional items or modifications outside the standard AS9102 First Article Inspection format, or any changes affecting special processes, critical items, or key characteristics, will be invoiced at an additional \$250 per FAI (or as otherwise quoted) and may extend lead times.
- h) All such changes shall be reviewed and approved per QP 8.2 and documented per QP 7.5-Control of Documented Information.
- i) Lead times will be extended to accommodate changes.

#### **9. INCIDENTAL CHARGES**

- a) Any special packaging requirements, source inspection by Buyer on the premises of Seller, or other requirements not expressly provided in an RFQ, or an Order shall be subject to additional charges by Seller.

#### **10. BUYER FURNISHED RAW MATERIAL OR SEMI-FINISHED MATERIALS**

- a) In the event any Order requires Seller to perform work on raw material or semi-finished materials supplied by Buyer (such as castings and forgings) but not purchased by Seller from Buyer, Buyer shall supply an adequate excess to allow for machining losses.
- b) All Buyer furnished materials are considered the property of the Buyer at all times.
- c) If Seller scraps any such materials, it shall not be liable to Buyer for such scrapped materials.
- d) Buyer warrants that any raw or semi-finished materials shall be suitable for the operations intended to be performed by Seller and shall be free of defects in workmanship and material.
- e) If found defective during processing, Buyer shall promptly deliver suitable replacements at no charge to Seller.
- f) Buyer shall pay Seller for all work performed to the time when the defect was discovered.



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#### 11. EXPEDITE POLICY

- a) When the Order stipulates that Product is to be expedited, Seller will make its commercially reasonable effort to meet the accelerated delivery date requested by Buyer.
- b) It is important to note that expedite fees help Seller to pay for overtime and other activities required to speed up the process to produce the Product more quickly than normal lead-time.
- c) This includes paying Seller's vendors to expedite processing of the parts.
- d) Therefore, expedite fees will be charged by Seller and paid by Buyer regardless of the actual date the Product ships to Buyer, unless an exception to this policy is agreed upon in writing and approved by Seller management.

#### 12. IMPORTING EXPENSES, LICENSING & REGULATIONS

- a) For shipments outside the United States, Buyer is responsible for payment of any and all import expenses, duties, satisfaction of the respective licensing requirements, and compliance with all U.S. Laws and all other applicable laws, regulations and standards, which are required by any governmental authority to whose jurisdiction Buyer is subject or which has jurisdiction over the place to which the Products are shipped.
- b) Seller will not be responsible for any such payments.

#### 13. SPECIAL TOOLING

- a) Unless otherwise specifically provided in a Quotation, special tooling developed by Seller to fulfill an Order shall be the property of Seller.
- b) Special tooling supplied by Buyer or special tooling developed by Seller, subject to property ownership of Buyer, shall be maintained by Seller with reasonable care at Buyer's risk to loss or damage arising from force major events, and Buyer is encouraged to provide its own insurance against such loss or damage.
- c) In the event Buyer does not claim such special tooling within two years after completion of Seller's deliveries under this contract, then Seller shall have the right, following 30 days' written notice to Buyer, to dispose of such special tooling without liability.

#### 14. LIMITATION OF WARRANTIES

- a) Seller guarantees to repair or replace any Product, at Seller's sole discretion, which may be found to be defective, non-suitable, or otherwise not in conformance with Buyer's Order, as accepted by Seller, provided that a claim and proof thereof is made in writing to Seller's home office in St. Joseph, Missouri within 5 business days after Buyer's receipt thereof.
- b) Each such claim must include a Return Materials Authorization ("RMA") number, which must be obtained by Buyer from Seller, and Seller may elect not to accept any such returns that do not reference an RMA number.
- c) Seller's obligation as hereunder specified is solely limited to replacement of the material, or repair of same, and in no event shall Seller be liable for transportation from or to Seller's warehouse, installation or repair costs, adjustment of price, or any other expenses which may arise in connection with the foregoing guarantee, including the labor costs incurred with Seller's verification time that ultimately determines that the return/rejection is invalid.
- d) Seller assumes no responsibility for application of this guarantee to materials which are damaged as a result of their misuse, misapplication, mishandling, or other faults of Buyer.
- e) SELLER MAKES NO OTHER WARRANTY OR GUARANTEE OF ANY KIND WHATSOEVER, WHETHER EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE. INCLUDING, BUT NOT LIMITED TO IMPLIED WARRANTIES OF FITNESS AND/OR MERCHANTABILITY.
- f) THE ABOVE WARRANTY CONSTITUTES SELLER'S ONLY WARRANTY AND NO PERSON OR ENTITY IS AUTHORIZED, ON BEHALF OF SELLER, TO MODIFY OR EXPAND UPON THE PROVISIONS EXPRESSED IN THIS PARAGRAPH.
- g) THE FOREGOING SHALL BE BUYER'S SOLE REMEDY AND RECOURSE WITH RESPECT TO THE NON-CONFORMING GOODS.
- h) Seller's warranty does not apply to any Product containing counterfeit parts or nonconforming material.
- i) Buyer shall immediately notify Seller of any suspected nonconformance per QP 8.7-Control of Nonconforming Outputs.
- j) Seller shall not accept returns without a valid Return Materials Authorization (RMA).
- k) Seller's warranty obligations support product safety per AS9100D 8.1.3.
- l) Buyer is responsible for proper application and use in accordance with the instructions provided.



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## 15. LIMITATION OF LIABILITY

- a) IN NO EVENT SHALL SELLER BE LIABLE FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES, LOST PROFITS OR REVENUES, OR DIMINUTION IN VALUE, ARISING OUT OF OR RELATING TO ANY BREACH OF THESE TERMS AND CONDITIONS, WHETHER OR NOT THE POSSIBILITY OF SUCH DAMAGES HAS BEEN DISCLOSED IN ADVANCE BY BUYER OR COULD HAVE BEEN REASONABLY FORESEEN BY BUYER, REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT, OR OTHERWISE) UPON WHICH THE CLAIM IS BASED.
- b) In no event shall Seller's aggregate liability arising out of or related to these Terms and Conditions, 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 Products.

## 16. CONDITIONAL WARRANTY

- a) Inspection and acceptance: Buyer shall inspect Product promptly upon receipt.
- b) Product will be deemed accepted five (5) business days after delivery unless Buyer gives Seller written notice identifying any visible or readily discoverable nonconformity with reasonable specificity.
- c) Latent nonconformities must be reported within five (5) business days after discovery, and in all events within the applicable warranty period.
- d) No chargebacks or back charges: Buyer may not offset, debit, charge back, or otherwise reduce any amount owed to Seller without Seller's prior written consent.
- e) Buyer agrees to comply with all instructions and specifications furnished by Seller relating to installation and application of the Products.
- f) Buyer agrees that it will not modify, misapply, or misuse such Products in any manner which would deviate from Seller's instructions.
- g) SELLER'S LIMITED WARRANTY MADE ABOVE IN PARAGRAPH 16 SHALL NOT BE EFFECTIVE AND SHALL BE VOID UNLESS SUCH PRODUCTS ARE APPLIED AND USED IN ACCORDANCE WITH SELLER'S INSTRUCTIONS.

## 17. BUYERS ASSUMPTION OF RISK, COVENANTS AND INDEMNITY

- a) Buyers assume all risk, liability and responsibility for any loss, damage, cost and expense arising out of or resulting from the handling, use, storage, disposal, or application of the Products.
- b) Buyer hereby assumes and agrees to indemnify, defend, and hold Seller and its officers, directors, owners, employees and agents (collectively, "Seller Parties") harmless from and against all liability, loss, cost, damage or expense (including reasonable attorneys' fees) (collectively, "Damages"), whether or not involving a third-party claim, based upon or resulting from the handling, use, storage, disposal, or application of the Products ordered hereby.
- c) Buyer warrants that the Products ordered hereby shall not be resold, transferred, exported, or reused in any way by Buyer in violation of any U.S. Laws.
- d) Buyer will indemnify, defend and hold Seller Parties from and against all Damages caused to Seller by any breach of the foregoing warranty or for the failure to comply with any laws or regulations, including without limitations, U.S. Laws governing law; venue; jury waiver: These Terms and Conditions, any Quotation, and any Order accepted by Seller shall be governed by and construed in accordance with the laws of the State of Missouri, without regard to conflict-of-laws rules.
- e) The state and federal courts located in Missouri shall have exclusive jurisdiction over any dispute arising out of or relating to these Terms and Conditions, and Buyer irrevocably submits to such jurisdiction and venue.
- f) EACH PARTY WAIVES, TO THE MAXIMUM EXTENT PERMITTED BY LAW, ANY RIGHT TO A TRIAL BY JURY.
- g) Cancellation and rescheduling charges: Buyer may not cancel, suspend, or reschedule any accepted Order without Seller's written consent.
- h) If Seller agrees, Buyer shall reimburse Seller for all costs incurred through the effective date of cancellation or change, including raw material, outside processing, tooling, non-recurring engineering, work in process, finished goods, and reasonable administrative charges, plus any non-cancellable commitments made in reliance on the Order.
- i) Buyer-directed sources and undisclosed aerospace/defense requirements: Seller shall have no responsibility for delay, nonconformity, or increased cost caused solely by any source, processor, material, specification, or service provider directed by Buyer.



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- j) Any customer-specific aerospace, defense, regulatory, source-inspection, serialization, traceability, ITAR, EAR, FAR, DFARS, NADCAP, or first article requirements are excluded unless expressly identified in Buyer's RFQ or Order and accepted in writing by Seller.

#### **18. FORCE MAJEURE**

- a) Allocation of constrained supply: In the event of shortages of labor, materials, capacity, utilities, transportation, or critical subcontract processing, Seller may allocate available capacity and supply among its customers, programs, and internal requirements in its sole commercially reasonable discretion, and such allocation shall not constitute a breach of these Terms and Conditions.
- b) Seller will not be liable to Buyer, nor be deemed to have defaulted or breached these Terms and Conditions, for any delay in performance or failure in performance resulting from circumstances beyond Seller's control, including, without limitation, acts of God, fire, flood, earthquake, explosion, governmental actions, war, invasion, hostilities, terrorist threats or acts, riots, other civil unrest, national emergency, revolution, epidemic, lockouts, strikes or other labor disputes, restrains or delays affecting carriers, inability or delay in obtaining raw materials required for the manufacturing of the Products, or supplies of adequate or suitable materials, telecommunication breakdown, or power outage, or from Seller's good-faith compliance with any U.S. Law or foreign governmental law, rule, order or regulation, whether or not it later is held invalid.

#### **19. CUMULATIVE REMEDIES**

- a) Except as set forth in Paragraph 16, all rights and remedies provided in these Terms and Conditions are cumulative and not exclusive, and the exercise by either party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently be available at law, in equity, by statute (including all remedies available to the parties under the Uniform Commercial Code as adopted in the governing jurisdiction specified in these Terms and Conditions), in any other agreement between the parties or otherwise.

#### **20. SEVERABILITY**

- a) Each paragraph and provision of this document is severable.
- b) If any one provision of this document is declared by a court of competent jurisdiction to be invalid or in conflict with the law, the remaining paragraphs and provisions of this document shall remain in full force and effect.

#### **21. AEROSPACE/DEFENSE APPLICATIONS**

- a) All Products manufactured by Seller are considered commercial unless Buyer expressly discloses in the RFQ or Order that the Products are intended for military, defense, or aerospace applications subject to ITAR, EAR, or other regulatory requirements.
- b) If aerospace/defense use is disclosed, the Order shall be reviewed per QP 8.2, and additional requirements (including AS9100D flow-downs, configuration management per QP 8.1.2, and product safety) shall apply.
- c) Buyer shall indemnify Seller for any failure to disclose such use.