



PURCHASE ORDER TERMS AND CONDITIONS

1. **Acceptance.** The terms and conditions set forth below shall govern the offer made by Vanamatic Corporation (the "Purchaser") to the Seller for the purchase of the goods listed on the Purchase Order on the face hereof or otherwise delivered to Seller subject to these terms and conditions (the "Purchase Order"). Seller shall be deemed to have accepted the Purchase Order and its terms and conditions when Seller a) executes and returns the acknowledgment, b) commences work on the goods the subject of the Purchase Order, or c) delivers to Purchaser any of the goods the subject of the Purchase Order. **ACCEPTANCE OF THE PURCHASE ORDER IS EXPRESSLY LIMITED TO THE TERMS CONTAINED ON THE FACE OF THE PURCHASE ORDER, ANY DOCUMENTS REFERRED TO ON THE FACE OF THE PURCHASE ORDER AND THESE PURCHASE ORDER TERMS AND CONDITIONS. ANY PROPOSAL FOR ADDITIONAL OR DIFFERENT TERMS OR ANY ATTEMPT BY SELLER TO MODIFY ANY OF THE TERMS AND CONDITIONS OF THE PURCHASE ORDER IS HEREBY REJECTED. IF THE PURCHASE ORDER IS DEEMED TO BE AN ACCEPTANCE OF A PRIOR OFFER TO SELL MADE BY SELLER, PURCHASER'S ACCEPTANCE IS EXPRESSLY LIMITED TO THE TERMS CONTAINED ON THE FACE OF THE PURCHASE ORDER, ANY DOCUMENTS REFERRED TO ON THE FACE OF THE PURCHASE ORDER AND THESE PURCHASE ORDER TERMS AND CONDITIONS. ANY ADDITIONAL OR DIFFERENT TERMS OR ANY ATTEMPT BY SELLER TO MODIFY ANY OF THE TERMS AND CONDITIONS OF THE PURCHASE ORDER SHALL BE DEEMED MATERIAL AND ARE HEREBY REJECTED.**

2. **Delivery.** Purchaser's schedules are based upon Seller's undertaking to ensure that the goods purchased hereunder will be delivered to Purchaser no later than the delivery date specified on the face hereof. *Time is therefore of the essence* in connection with the Purchase Order and Seller shall make every effort within its control at no additional cost to Purchaser (including, but not limited to, any necessary overtime and expediting expenses) to meet such delivery date. Seller shall be liable to Purchaser for any excess costs or expenses incurred by Purchaser as a result of any breach of the delivery schedule, including, but not limited to, any costs incurred by Purchaser in effecting cover. If at any time Seller has reason to believe that deliveries will not be made as scheduled, Seller shall immediately give written notice thereof to Purchaser so that Purchaser may, if it desires, take steps to purchase such goods elsewhere. If any goods are not delivered within the time specified in the Purchase Order, Purchaser may cancel the Purchase Order without prejudice to its other rights, and may refuse to accept late delivery of goods. Acceptance of late delivery by Purchaser shall not be deemed a waiver of Purchaser's claims for damages as a result of late delivery.

3. **Force Majeure.** Purchaser may delay delivery or acceptance of goods occasioned by government action or failure of the government to act where such action is required, changes in Purchaser's production schedule, strike or other labor trouble, fire or unusually severe weather. Seller shall hold such goods at the direction of the Purchaser and shall deliver them when the cause creating the delay has been removed. Purchaser shall be responsible only for Seller's direct additional costs in holding the goods or delaying performance at Purchaser's request.

4. **Risk of Loss/Insurance.** Unless otherwise set forth on the face of the Purchase Order, all goods shall be delivered to Purchaser F.O.B. Purchaser's location designated on the face of the Purchase Order and risk of loss shall pass to Purchaser only upon Purchaser's actual receipt of the goods.

5. **Price Warranty.** Seller represents that the prices shown on the face of the Purchase Order are complete and cover the cost of all supervision, labor, tools, materials and equipment necessary to produce the goods purchased hereunder and that no additional charges such as, but not limited to, packaging, labeling, storage, taxes, insurance or price escalation shall be added without Purchaser's express written consent. Seller also represents that the prices charged for these goods are the lowest prices charged by Seller to buyers of a class similar to Purchaser under conditions similar to those specified in the Purchase Order. Seller agrees that any price reduction in goods covered by the Purchase Order occurring subsequent to the date hereof will be applicable to the Purchase Order.

6. **Changes.** No goods may be substituted in lieu of those specified, without Purchaser's written consent. Purchaser reserves the right to make alterations, deviations, additions to and omissions from the specifications with respect to the goods or the quantity of goods ordered hereunder. All such changes will be set forth in a written change order prepared by the Seller which will specify the change, the adjustment of the delivery time, if any, and the basis of compensation for such change. A change will not become effective, and Seller will not be entitled to any additional compensation with respect to the goods, unless and until the written change order is approved in writing by Purchaser.

7. **Payment.** Payment shall be due hereunder to Seller on account of any invoice submitted hereunder as set forth on the face of the Purchase Order. Any cash discount period shall be computed as commencing with receipt of invoice or receipt of the goods, whichever is later. No payment made shall be evidence of the performance of Seller's duties hereunder or shall be construed as an acceptance by Purchaser of defective or improper goods.

8. **Warranties.** Seller expressly warrants that all goods covered by the Purchase Order:

a. shall be new (unless otherwise required or permitted by the specifications), merchantable, safe, of good quality and free from defects, latent or patent, in design, material and workmanship;

b. shall conform to the approved drawings and specifications and to any models and samples furnished or specified by Purchaser and shall be satisfactory to the Purchaser;

c. shall, if Seller knows or has reason to know the particular purpose for which Purchaser intends to use such goods, be suitable and sufficient for Purchaser's intended purpose;

d. shall conform to any statements made on the containers, labels or advertisements therefor; and

e. shall be designed, manufactured, labeled, tested, inspected, packaged and shipped in compliance with Purchaser's requirements and all applicable laws, regulations, carrier tariffs and classifications.

The warranties shall run in favor of Purchaser, its customers, successors and assigns. Seller, at Purchaser's option and upon written notice from Purchaser, agrees to repair or replace, at Seller's expense, any goods covered by the Purchase Order which prove to be defective in design, material or workmanship within one (1) year of Purchaser's actual receipt (or any greater period of time provided for in the specifications) and agrees to bear all costs incurred by Purchaser involving damage to or the reworking of other work or goods caused by any such defect in the goods purchased hereunder. This option is not exclusive, and Purchaser may exercise any other rights, either alone or in conjunction with this option, to fully remedy any breach by Seller of any of the warranties.

9. **Patents.** Seller warrants that the goods covered by the Purchase Order and the manufacture, sale or use of them will not infringe any United States or foreign patents, copyrights or trademarks. Seller agrees, upon receipt of notification, to promptly assume full responsibility for defense of any claim, suit or proceeding which may be brought against Purchaser or its agents or customers for alleged patent infringement, as well as for any alleged unfair competition resulting from similarity in design, trademark or appearance of goods furnished hereunder, and Seller further agrees to indemnify Purchaser, its agents and customers against any and all expenses, losses, royalties, profits and damages, including court costs and attorneys' fees, resulting from any such claim, suit or proceeding, including any payments made in settlement thereof. Purchaser may be represented by and actively participate through its own counsel in any such suit or proceeding if Purchaser so desires, and Seller shall pay the costs of such representation.

10. **Compliance with Laws.** Seller shall comply with all federal, state and local laws, executive orders, ordinances and regulations in performing its obligations under the Purchase Order.

11. **Inspection and Rejection.** Purchaser's acceptance of any goods purchased hereunder is subject to its inspection and approval within a reasonable time after receipt of such goods by Purchaser. Purchaser reserves the right to reject, refuse or revoke acceptance of and return, at Seller's expense, any items found to be defective in material or workmanship or otherwise not conforming to the terms of the Purchase Order. Purchaser may charge Seller for the cost of unpacking, inspecting and repacking rejected goods and all transportation and handling costs incurred in connection therewith. No inspection rights of Purchaser shall, however, relieve Seller from the obligation to fully and adequately test and inspect the goods sold hereunder.

12. **Insurance.** Seller shall at all times during the term of this Purchaser Order obtain and maintain at its own cost and expense, comprehensive commercial general liability insurance (including products liability, contractual liability, fire, legal liability, and premises operations), with limits of not less than \$1,000,000 combined single limit (through both primary and umbrella/excess insurance policies) per occurrence for bodily injury to, illness of, or death to any person or persons, and loss or damage to any property occurring as a result of the activities to be conducted and the goods to be produced and sold under this Purchaser Order. Seller shall also obtain worker's compensation insurance. Each such insurance policy shall be written by an

insurance carrier carrying a Best's rating of at least 'A-' and shall be otherwise reasonably acceptable to Purchaser, and shall name Purchaser as an additional insured. Without Purchaser's prior written consent, the terms and conditions of such insurance shall not be materially changed, altered (unless to increase coverage), or canceled until ten (10) days after termination or cancellation of this Agreement. A certificate of such insurance coverage shall be furnished to Purchaser at any time upon request by Purchaser.

13. **Indemnification.** Seller shall defend, indemnify and hold Purchaser and Purchaser's agents, customers, successors and assigns harmless from and against any and all claims, actions, liabilities, damages, losses, costs and expenses, including court costs and attorneys' fees, whether resulting in injury or death to any person, damage to any property, or any other damage or loss by whomsoever suffered, arising out of or claimed to result in whole or in part from any actual or alleged

- a. defect in any goods supplied hereunder, whether latent or patent, including actual or alleged improper design or fabrication of such goods or the failure of such goods to comply with the drawings and specifications or with any express or implied warranties of Seller;
- b. negligence or defective workmanship in the manufacture or provision of such goods;
- c. breach by Seller of any of the terms or conditions of the Purchase Order; or
- d. violation by Seller of any law, statute, ordinance, rule or regulation.

This indemnification shall be in addition to Seller's warranty obligations.

14. **Installment Contract/Quantity.** If the goods described herein are to be shipped on an installment basis per Purchaser's releases, Purchaser shall not be liable for any goods processed in excess of releases issued by Purchaser's purchasing department, and any such goods shipped without releases may, at Purchaser's option, be refused by Purchaser, stored by Purchaser for Seller's account or reshipped to Seller at Seller's expense.

Purchaser accepts no responsibility for goods or materials shipped in excess of the quantities specified on the face of the Purchase Order, and any such excess may, at Purchaser's option, be returned to Seller at Seller's expense.

15. **Proprietary Information.** Seller agrees to keep confidential all information, including drawings and specifications, furnished to it by Purchaser and agrees not to disclose such information to any other person or use such information except for the purpose of performing Seller's obligations hereunder. Seller acknowledges that money damages would be an insufficient remedy for any breach of this obligation and that any such breach would cause Purchaser irreparable harm. Accordingly, Seller agrees that Purchaser shall be entitled to injunctive relief for any breach or threatened breach of this obligation (without the necessity of posting any bond), and agrees not to oppose the granting of such relief.

16. **Termination for Convenience.** Purchaser may terminate the Purchase Order, or any part hereof, for its sole convenience by giving written notice of termination to Seller. In the event of such termination, Seller shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers or subcontractors to similarly stop work. Seller shall be paid a reasonable termination charge based upon its actual work performed prior to receiving notice of termination, plus its actual direct costs resulting from the termination. Seller shall not be paid for any work performed or costs incurred after its receipt of Purchaser's notice of termination. In case of termination by Purchaser under this paragraph, any termination claim must be submitted by Seller to Purchaser within sixty (60) days after the effective date of termination.

IN NO EVENT SHALL PURCHASER BE LIABLE TO SELLER FOR ANY ANTICIPATED OR LOST PROFITS OR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, INDIRECT OR CONTINGENT DAMAGES RESULTING FROM ANY TERMINATION OF THE PURCHASE ORDER OR ANY PART HEREOF.

17. **Termination for Cause.** Purchaser may also terminate the Purchase Order, or any part hereof, upon the occurrence of any of the following events of default:

- a. death, dissolution, termination of existence, insolvency or business failure of Seller;
- b. appointment of a receiver for any part of Seller's property, assignment for the benefit of Seller's creditors or the commencement of any proceedings under any bankruptcy, insolvency or reorganization laws by or against Seller;
- c. Seller's breach of any of the terms, conditions or instructions hereof, including any warranties;
- d. Seller's failure to make delivery in accordance with agreed delivery requirements;
- e. Seller's failure to replace any defective goods within a reasonable time after receipt of Purchaser's written notice as set forth hereinabove; or
- f. Seller's failure to provide Purchaser with timely and satisfactory assurances of future performance upon Purchaser's request for such assurances.

In the event of such a termination, Purchaser shall not be liable to Seller for any amount, and Seller shall be liable to Purchaser for any and all damages sustained by Purchaser as a result of the defaults which gave rise to the termination.

IN NO EVENT SHALL PURCHASER BE LIABLE TO SELLER FOR ANY ANTICIPATED OR LOST PROFITS OR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, INDIRECT OR CONTINGENT DAMAGES RESULTING FROM ANY TERMINATION OF THE PURCHASE ORDER OR ANY PART HEREOF.

18. **Remedies and Waiver.** The remedies herein reserved to Purchaser shall be cumulative and in addition to any other or further remedies provided at law or in equity. No waiver by Purchaser of any breach of any term, condition or provision hereunder shall be effective unless in writing and signed by an authorized representative of Purchaser, and even then such waiver shall not constitute a waiver of any other breach of such term, condition or provision or of any other breach of the Purchase Order.

19. **Set-Off.** All claims by Seller for money due or to become due from Purchaser shall be subject to deduction or set-off by Purchaser by reason of any counterclaim arising out of this or any other transaction between Purchaser and Seller.

20. **Limitations of Actions/Limitation on Purchaser's Liability.** Any action against Purchaser based on Purchaser's alleged breach of its obligations hereunder must be commenced within one (1) year after the cause of action has accrued.

IN NO EVENT SHALL PURCHASER BE LIABLE FOR SELLER'S ANTICIPATED OR LOST PROFITS OR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, INDIRECT OR CONTINGENT DAMAGES OF ANY KIND WHETHER ARISING IN CONTRACT, TORT OR OTHERWISE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH ANTICIPATED OR LOST PROFITS OR DAMAGES. IN NO EVENT SHALL PURCHASER BE LIABLE TO SELLER FOR ANY DAMAGES WHATSOEVER IN EXCESS OF THE ACTUAL PURCHASE PRICE ALLOCABLE TO THE GOODS WHICH GIVER RISE TO THE CLAIM.

21. **Entire Agreement.** The Purchase Order (including these Purchase Order Terms and Conditions) and any documents referred to on the face hereof constitute the entire agreement between the parties. No modification of any of the terms or conditions of the Purchase Order shall be effective against Purchaser unless such modification is in writing and signed by an authorized representative of Purchaser.

22. **Binding Effect.** This contract shall be binding upon and inure to the benefit of Seller and Purchaser and their respective successors and assigns. However, Seller shall not assign any of its rights nor delegate any of its obligations under the Purchase Order, nor assign any monies due to Seller hereunder, without Purchaser's prior written consent.

23. **Applicable Law.** This contract shall be deemed to have been entered into and shall be construed according to the Uniform Commercial Code as adopted in the State of Ohio. All terms which are defined in such Code shall have the same meaning herein. Seller agrees that any claims arising under the Purchase Order shall be brought exclusively in a court of competent jurisdiction in Lucas County, Ohio, and Seller hereby waives any objections to the jurisdiction over the person or proper venue of such courts.