



Titanium Industries, Inc. (T.I.)
18 Green Pond Road
Rockaway, NJ 07866 USA
t: (+1) (973) 983-1185
f: (+1) (973) 983-8015
e: corp@titanium.com
1-88-TITANIUM (1-888-482-6486)

TITANIUM INDUSTRIES, INC. TERMS AND CONDITIONS OF PURCHASE

These Terms and Conditions govern that purchase and sale transactions between the seller identified on the face hereof (the "Seller") and Titanium Industries, Inc., the basic terms of which appear on the face of this Purchase Order, of which these Terms and Conditions are an integral part. Any irreconcilable conflicts between these Terms and Conditions and the face of the Purchase Order shall be resolved in favor of the face of the Purchase Order.

1. **Terms and Acceptance:** This Purchase Order becomes a binding contract (the "Contract"): (1) when an executed acknowledgement copy hereof by Titanium Industries, Inc., or (2) when shipment according to schedule of all or any portion of the goods covered by this Purchase Order shall be made, or (3) when Titanium Industries, Inc. gives Seller written approval of the price and delivery schedule of the goods as stated by Seller if Seller's written acknowledgement of this Purchase Order contains either: (a) a different price or delivery schedule or a different type of item, or (b) no price or no delivery schedule for the item or items to which Titanium Industries, Inc.'s approval applies. Except as provided in the preceding sentence, it is an express condition of this Purchase Order and to Seller's obligation to perform there under that any provisions printed or otherwise contained in any acknowledgement hereof or in any other response hereto, inconsistent with or in addition to the terms and conditions herein stated, an any alteration in this Purchase Order, shall have no force or effect, and that Seller by such acknowledgement or response thereby agrees that any such provisions therein or any such alterations in this Purchase Order shall not constitute any part of the contract of purchase and sales created hereby. The Contract resulting from Seller's acceptance of this Purchase Order contains the entire agreement of the parties, and failure of either party to enforce any of its rights hereunder shall not constitute a waiver of such right or of any other rights hereunder.

2. **Inspection, Warranty:** Goods delivered (whether paid for or not) are subject to inspection, testing, and approval by Titanium Industries, Inc. before acceptance. Seller expressly warrants that all articles, materials, and work will conform to the applicable drawings, specifications, samples, or other descriptions given in all respects, and that the goods delivered hereunder will be of the highest quality, material, and workmanship, and will be merchantable and free from defects. This warranty shall survive any inspection, delivery, acceptance, or payment by Titanium Industries, Inc. of the goods or services.

3. **Nonconforming Goods:** All goods not fully up to standard and not in compliance with the specifications hereof, or shipped contrary to instructions, or in excess of the quantities herein provided, or substituted for goods described, or not shipped in containers conforming to Titanium Industries, Inc.'s specifications (or in the absence of such specifications, in recognized containers), or allegedly violating any statute, ordinance, or administrative order, rule, or regulation, may be rejected by Titanium Industries, Inc. and returned or held at Seller's expense and risk. Titanium Industries, Inc. may charge to Seller all expense of inspection, unpacking, examining, repacking, storing, and reshipping any goods rejected as aforesaid. The remedies herein above afforded to Titanium Industries, Inc. shall not be exclusive, but Titanium Industries, Inc. shall not be exclusive, but Titanium Industries, Inc. may hold Seller liable for any and all damage arising from any breach or default hereinabove set forth.

4. **Price:** Prices recorded in this Purchase Order are not subject to increase. No additional amounts shall be chargeable to Titanium Industries, Inc. because of taxes or excises, presently or hereafter levied on Seller. If Seller's quoted prices for the goods covered by this Purchase Order are reduced (whether in the form of a price reduction, close-out, rebate, allowances, or additional discounts offered to anyone) at time of any shipment, Seller agrees that the price to Titanium Industries, Inc. for such goods will be reduced accordingly, and that Titanium Industries, Inc. will be billed at such reduced prices. If price is not recorded on the face of this Purchase Order, price shall be that of most recent prior order given by Titanium Industries, Inc. to Seller, subject to the provisions of this paragraph. If price includes taxes or excises, and if such taxes or excises or any part thereof are hereafter refunded to Seller, Seller shall immediately pay Titanium Industries, Inc. the amount of such refund. Seller certifies that the prices herein are not higher than prices being charged to other organizations purchasing identical goods in smaller quantities at this particular time and do not discriminate against purchaser. The price herein specified is warranted against any decline that may be made by other Sellers of goods covered by the Purchase Order; if at any time during the term of this Contract, a price shall be offered by such competing Sellers which is lower than the Seller may agree to, the Seller shall notify Titanium Industries, Inc. forthwith and allow Titanium Industries, Inc. to buy the goods elsewhere and such quantity shall be deducted from the unshipped portion due Titanium Industries, Inc. under the terms of the Contract.

5. **Price Discrimination:** Seller represents that the prices and terms of purchase, and any allowances available shall be in full compliance with the Robinson Patman Act.

6. **Payment:** Terms of payment are as previously arranged, or if specified in this Purchase Order, then as so specified in this order. Drafts will not be honored under any circumstances.

7. **Delivery Time of Essence:** Titanium Industries, Inc.'s schedules are based upon the agreement and understanding that the goods will be delivered to Titanium Industries, Inc. by the dates specified on the face of this Purchase Order. Time is therefore of the essence and if goods are not delivered within the time specified hereon, Titanium Industries, Inc. may reject such goods and cancel order. The acceptance of later or defective deliveries shall not be deemed a waiver by Titanium Industries, Inc. of its right to cancel this Purchase Order, or to refuse to accept further deliveries.

8. **Packing:** Each package shall be numbered and labeled with Titanium Industries, Inc.'s order number, stock number, contents, and weight, shall contain all itemized packing slip and shall be properly prepaid for shipment so as to secure lowest transportation and insurance rates and to meet carrier's requirements unless otherwise specified. No charges will be allowed Seller for packing, breaking, freight, express, or cartage unless stated herein.

9. **Warranty Against Infringement:** Seller warrants that the sale or use of goods of Seller's design or Seller's patents covered by this Purchase Order either alone, or in combination with other materials, will not infringe or contribute to the infringement of any patents or trademarks or copyrights either in the U.S.A or foreign countries, and Seller shall defend every suit which shall be brought against Titanium Industries, Inc. or any party selling or using Titanium Industries, Inc.'s products for any alleged infringements of any patents, trademarks or copyrights, by reason of the sole or use of said materials either alone, or in combination with other materials and to pay all expenses and fees of counsel which shall be incurred and about defending every such suit and all costs, damages, and profits recoverable in every such suit.

10. **Trademark:** If the goods specified within this Purchase Order are peculiar to Titanium Industries, Inc.'s Trademark or identifying mark they shall not bear Trademark or other designation of the market or Seller and similar goods shall not be sold or otherwise disposed of to anyone other than Titanium Industries, Inc. without the written consent of Titanium Industries, Inc. The title of any and all drawings and blueprints, jigs, dies, patterns, tools, etc. used in connection with this Purchase Order shall at all times vest in Titanium Industries, Inc. and shall upon completion of deliveries hereunder or upon termination of the Contract, be delivered to Titanium Industries, Inc. upon request and Seller assumes all liability for loss thereof or for Seller's failure to return such property to Titanium Industries, Inc. Unless authorized by Titanium Industries, Inc. in writing, Titanium Industries, Inc.'s name, trade name, or the name of any Titanium Industries, Inc.'s subsidiaries or affiliates, shall not be used in Seller's advertising.

11. **Compliance With Law:** The performance of any work pursuant to this Purchase Order is and shall be subject in all respect to and in compliance with all laws, rules, regulations, and ordinances, proclamations, demands, directives, executive orders, or other requirements of the municipal, state, and federal governments and all subdivisions thereof which now govern or may hereafter govern the manufacture, sales, or delivery of the parts, supplies, and goods, contemplated by this Purchase Order, including, but not limited to the provisions of the Fair Labor Standards Act of 1938, the Walsh Healy Act, the Federal Food, Drug, and Cosmetic Act, and any other applicable laws.

12. **Indemnification by Seller:** Seller will indemnify, hold harmless, and defend Titanium Industries, Inc. from and against any and all claims, demands, damages (including, without limitation, compensatory, general, special, consequential, and punitive damages), losses, liabilities, actions and causes of action arising out of any actual or threatened physical or economic injury to person or property or any loss relating to or in any way connected with (i) the performance of the Contract, (ii) a breach of any covenant made or warranty given by Seller in this Contract, and (iii) any defect of any kind in the goods which are the subject of this Purchase Order.

13. **Taxes:** Seller accepts liability for payment of all payroll and Social Security taxes and all other federal, state, or local taxes now or hereinafter imposed by any governmental authority.

14. **Delegation Assignment:** Seller shall not delegate or assign any duties or claims under the Purchase Order without Titanium Industries, Inc.'s prior written consent. Any such delegation or assignment attempted without Titanium Industries, Inc.'s previous written consent shall effect, at Titanium Industries, Inc.'s option, a cancellation of all Titanium Industries, Inc.'s obligation hereunder. All claims for monies due or to become due from Titanium Industries, Inc., for any setoff or counterclaim arising out of this Purchase Order or any other purchase orders issued by Titanium Industries, Inc., to Seller, whether such setoff or counterclaim arose before or after any such assignment by Seller.

15. **Modification:** Titanium Industries, Inc. shall have the right to make, from time to time, and without notice to any sureties or assignees, changes as to packing, testing, destination, specifications, designs, and delivery schedule. Seller shall immediately notify Titanium Industries, Inc. of any increase or decreases in costs caused by such changes and an equitable adjustment of prices or other terms hereof shall be agreed upon in written amendment to this Purchase Order.

16. **Cancellation:** Titanium Industries, Inc. reserves the right at any time and from time to time without cause, to cancel all or any part of the undelivered portion of this Purchase Order by notice to Seller. In the event of such cancellation, Titanium Industries, Inc. shall not be liable to Seller for loss of anticipatory profits. The provisions of this paragraph shall not limit or affect Titanium Industries, Inc.'s right to terminate this Purchase Order for default of Seller.

17. **Waiver of Liens:** Seller hereby waives and relinquishes all liens and claims statutory or otherwise which Seller now has or may hereafter have as a result of labor done and materials furnished by Seller or Titanium Industries, Inc. in performance of the written Purchase Order.

18. **Default:** Upon the happening of any one or more of the following events, Titanium Industries, Inc. shall forthwith have the unrestricted right to cancel and terminate the within Contract without cost or liability to Titanium Industries, Inc.: (1) Seller's insolvency or inability to meet obligations as they become due; (2) filing of voluntary or involuntary petition of bankruptcy, by or against Seller, (3) institution of legal proceedings against Seller by creditors or stockholders; (4) appointment of a receiver for Seller by any court of competent jurisdiction. The acceptance of goods or performance after the occurrence of any of the events above enumerated shall not affect the right of Titanium Industries, Inc. to cancel its additional obligations.