



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)
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**TITANIUM
INTERNATIONALGMBH
TERMS AND CONDITIONS
OF SALE AND DELIVERY**

The following sets forth the terms and conditions governing the sale of goods of Titanium Industries International GMBH. ("Titanium" or the "Seller"). All terms and conditions are subject to change from time to time in the sole discretion of Seller. It is expressly agreed by you (hereinafter referred to as the "Buyer") that (i) Seller's acceptance of any purchase orders or similar orders for goods (each a "Buyer Order"); and (ii) any quotation provided by Seller, any Buyer Order issued as a result of such quotation and any sale resulting from such quotation, are expressly conditioned on your agreement to the terms and conditions set forth herein in their entirety and your agreement that such terms and conditions shall constitute the sole terms and conditions governing any Buyer Order, quotation or sales of Seller. The Terms and Conditions are only binding for entrepreneurs within the meaning of section 14 of German Civil Code (*BGB*). An entrepreneur is an individual, legal entity or partnership with legal personality who or which, when entering a legal transaction, acts in exercise of his or its trade, business or profession. **THE TERMS AND CONDITIONS SET FORTH HEREIN SHALL TAKE PRECEDENCE OVER ANY OTHER TERMS AND CONDITIONS AND NO CONTRARY; ADDITIONAL OR DIFFERENT TERMS OR CONDITIONS SHALL BE BINDING ON SELLER UNLESS EXPRESSLY AGREED TO IN TEXTUAL FORM BY AN AUTHORIZED OFFICER OF SELLER. SELLER HEREBY REJECTS ALL ADDITIONAL, CONTRARY OR DIFFERENT TERMS AND CONDITIONS PROPOSED BY BUYER IN ANY BUYER ORDER OR OTHERWISE, AND NO SUCH ADDITIONAL, CONTRARY OR DIFFERENT TERMS OR CONDITIONS SHALL BE BINDING ON SELLER.**

1. **Payment Terms:** Unless otherwise stated, the terms of payment will be net thirty (30) days from invoice date, with interest at the rate of 9 percentage points above the base interest rate per annum on the unpaid balance on all invoices not paid when due. Unless otherwise stated, all prices DO NOT include delivery unless stated in writing and cover bulk packaging only.
2. **Variations:** Shipments will be subject to a quantity and/or variation of $\pm 10\%$, the same to be accepted by Buyer as compliance with the contract. Reorders will be deemed as having been placed under the same terms and conditions as are set forth herein unless such orders are placed under a revised quotation in textual form (and/or offer) and accepted in accordance with paragraph 3 hereof. Unless otherwise stated therein, all quotations are subject to change without notice. Prices shown in published price lists, brochures, and other literature or marketing materials shall be considered only a guidance, and are not offers to sell and are subject to confirmation by specific quotations.
3. **Acceptance:** Seller's offers are subject to Seller's confirmation and non-binding unless expressly stipulated otherwise. Buyer's orders are binding for Buyer and shall be considered an offer for the conclusion of a contract. Unless stipulated otherwise in the order, each party is entitled to accept the order within 30 days after receipt. Amendments and supplements to a contract between Buyer and Seller, including these terms and conditions, must be made in textual form provided that authorized representatives are entitled to enter deviating individual agreements.
4. **Packaging, Shipment and Risk of Loss:** Unless otherwise stated, all prices cover bulk packaging only, all goods are sold from seller and all risk of loss or damage in-transit shall pass to Buyer at the time the goods are made available to a carrier at Seller's plant.
Order Cancellation/Rescheduling: Any requests by Buyer for cancellation of any Buyer Order must be received by Seller in writing. Any cancellation by Buyer of all or any part of any Buyer Order received or accepted by Seller is subject to a 30% cancellation charge. Orders for unique, non-standard inventory items including but not limited to alloy, product, specification, or quantity obtained by T.I. to fulfill customer order and specifications are non-cancellable. Reschedules (delays/push-outs) may be accommodated at Seller's discretion. A reschedule approved by Seller in writing which is more than thirty (30) days after the original scheduled delivery date is, at Seller's discretion, subject to a 5% rescheduling charge for each thirty (30) days of schedule extension.
5. **Taxes:** Buyer agrees to pay any and all sales taxes, tariffs, surtaxes, excise taxes, and use taxes which either Buyer or Seller may become legally liable for as a result of this transaction.
6. **Patents, Trademark and Copyright Indemnity:** If Seller is held liable for Buyer's infringement of patents, copyrights or trademarks, Buyer shall defend, indemnify, and hold harmless Seller from and against any and all claims, losses, liabilities, damages and costs, including, without limitation, legal fees, arising from or in connection with any suit, claim or proceeding of such infringement of any intellectual property rights.
7. **Delivery/Force Majeure:** Seller shall not be liable in any way (for damages or otherwise) resulting directly or indirectly from any delay in performance or delay in delivery due to unforeseen circumstances or caused by circumstances beyond its control, including, without limitation, an act of God, fires, floods, acts of terrorism, wars, government actions or actions of public authorities, accidents, labor troubles, labor shortages, strikes, lockouts, embargos, riots, any national emergency, Buyer caused delays, unavailability of materials, unavailability of equipment, or unavailability of transportation ("Force Majeure Event"). Performance shall be deemed suspended during and extended for such time as any such circumstances or causes delay is execution. In case of a Force Majeure Event, Seller shall give notice to Buyer of the existence and (expected) duration of the Force Majeure Event.



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8. **Retention of Title:** All goods delivered to Buyer shall remain Seller's property ("Reserved Property") until all of Seller's accounts receivable resulting from the business relationship with Buyer have been fully settled. In case of breach of contract, e.g. default of payment, Seller shall have the right to reclaim the Reserved Property provided that Seller determined an appropriate period of time for curing the breach. Buyer is obliged to handle the goods with the diligence of a prudent businessman, especially to store the goods appropriately and, at his own expenses, insure the goods at their replacement value against fire, water or theft. Buyer is entitled to resell the Reserved Property in the usual course of business. Any claims resulting from such resale are hereby assigned to Seller who accepts such assignment. Buyer is entitled to collect the claim even after such assignment. Seller's right to collect the claim remains unaffected. Seller undertakes not to collect the claims unless Buyer does not fulfill its payment obligations out of the proceeds received, is in default of payment or if a petition to open insolvency or similar proceedings has been filed against Buyer. In these cases, Seller shall be entitled to demand from Buyer to disclose the assigned claims and the respective obligors, provide all information required for collecting the claims, hand over all related documentation and notify the obligors about the assignment. Should the value of existing collateral exceed the nominal amount of the secured claims by more than 10 %, Seller will, upon Buyer's request, release, at Seller's discretion, portions of the collateral to such extent.
9. **Liability for Defects:** Buyer's remedies in case of defect depend on Buyer's fulfilment of its statutory examination and notification obligations as follows: In case of a defect apparent upon reasonable inspection, Buyer must notify Seller within 30 days after delivery. In case of hidden defects, Buyer must notify Seller within 14 days after Buyer discovered, or should have discovered through the exercise of reasonable investigations, the defect. In case of failure to notify Seller in accordance with this section, Buyer shall not have any remedy right for the defect. In case of defect, Seller may choose, at its sole discretion, whether to cure the defect by replacing or by repairing the defective good. This does not affect Seller's right to refuse cure of the defect in accordance with statutory law. Seller is entitled to make remedy subject to prior payment of the due purchase price by Buyer, while this shall not affect Buyer's statutory right to retain a portion of the purchase price as appropriate in view of the defect. Buyer shall allow for adequate time and opportunity to remedy the defects, particularly hand over or make accessible to Seller the goods for which complaints were made for the purpose of examination. In case of a replacement, Buyer shall return the defective goods pursuant to statutory law, unless otherwise requested by Seller. Seller's obligation to remedy a defect does neither include the obligation to disassemble the defective goods nor the obligation to assemble the newly delivered goods, unless Seller has assumed an obligation to assemble in the underlying sales contract.
10. **Reimbursement of Expenses:** Seller shall bear or reimburse the expenses necessary for the purpose of inspection and subsequent performance, in particular transport, travel, labor and material costs and, if applicable, costs for assembling or disassembling the goods, according to statutory law if a defect actually exists. Otherwise, Seller may demand reimbursement from Buyer of the costs incurred as a result of the unjustified request to remedy the defect, unless the lack of defectiveness was not apparent to Buyer.
11. **Limitation of Liability:** Seller's liability – irrespective of its legal basis – shall be limited to damages caused by willful intent or gross negligence. However, Seller shall be liable for simple negligence in case of damages which result from the breach of material contractual obligations (i.e. an obligation which is material for the performance of the contract and compliance with which the other party regularly expects and may expect) whereas, in this case, Seller's liability shall be limited to typical damages which Seller could have foreseen as a possible consequence of such breach at the time of entering into the Agreement. These limitations of liability do not apply in case of damages to life, body or health, if and to the extent Seller has maliciously deceived (*arglistig verschwiegen*) a defect, if and to the extent Seller has assumed a guaranty for the quality of the goods or claims of buyers under the German Product Liability Act (Produkthaftungsgesetz).
12. **Limitation Period:** The warranty period is one year as of delivery of the goods. This does not apply to damage claims resulting from injury to life, body or health or intentional or grossly negligent breach of duty by Seller or a party engaged by Seller, if and to the extent Seller has maliciously deceived (*arglistig verschwiegen*) a defect or if and to the extent Seller has assumed a guaranty for the quality of the goods. Likewise, this does not apply to claims resulting from buyer regress in case of final delivery to a consumer (sections 478, 445a BGB) and pursuant to the German Product Liability Act (Produkthaftungsgesetz).
13. **Applicable Law:** This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of the Federal Republic of Germany excluding the UN Convention on Contracts for the International Sale of Goods (CISG).
14. **Jurisdiction:** The courts of Meerbusch, Germany, shall have exclusive jurisdiction for all disputes arising out of or in connection with this Agreement or its validity.