

PERFORMANCE TITANIUM GROUP

TERMS AND CONDITIONS OF SALE (including security provisions)

1. Terms Unless otherwise stated, the terms of payment will be net thirty (30) days from invoice date, with interest at the rate of twelve percent (12%) per annum on the unpaid balance on all invoices not paid when due. A \$50 administrative fee will be charged to your account for any notice of Non-Sufficient Funds (NSF) or Returned Checks. Unless otherwise stated all prices are F O B Performance Titanium Group's plant.
2. Variations Shipments will be subject to a variation of \pm 15% in quantity, which you hereby accept as substantial performance of 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 confirmation. Any clerical or typographical errors are subject to correction.
3. Acceptance This offer by Performance Titanium Group ("Seller") may be accepted only in writing by you or your authorized representative, and upon your acceptance shall be binding upon the parties, provided, however, that, if not sooner accepted in writing if this offer (containing these terms and conditions) is sent to you contemporaneously with or accompanying Seller's shipment of any of the goods covered hereby, then this offer (containing these terms and conditions) shall be deemed accepted in its entirety by you upon your acceptance, in whole or in part, of the tender of delivery of such shipment (and the contract resulting thereby is herein referred to as the "Agreement") Once so accepted, the Agreement is intended by the parties as a final expression of their agreement with respect to the subject matter hereof, and as a complete and exclusive statement of its terms. No course of prior dealing between the parties and no usage of trade shall be relevant or admissible to supplement, explain or vary any of the terms hereof. Acceptance of, or acquiescence in, a course of performance rendered under this or any prior agreement shall not be relevant or admissible in determining the meaning of this agreement even though the accepting or acquiescing party has knowledge of the nature of performance and an opportunity to make objection. No understandings, representations or agreements have been made or relied upon in the making of this agreement other than those specifically set forth herein. Acceptance for (or deemed acceptance) by you of this offer (containing these terms and conditions) shall constitute an agreement upon your part to the terms and conditions hereof, and supersedes all previous agreements. If you, in lieu of accepting this offer in the manner contemplated by this paragraph 3, shall forward to the Seller another or different purchase order for the goods covered hereby, such action shall be deemed to be your acceptance of this offer (containing the terms and conditions herein expressed), notwithstanding the fact that your purchase order may contain terms different from or additional to those contained herein, in such event, such different or additional terms shall be null and void, but such nullity shall not affect the formation of the contract between you and Seller on the terms herein set forth. Your forwarding of a purchase order received by Seller at any time subsequent to Seller's shipment of all or any part of the goods covered hereby shall be a nullity and of no legal effect whatsoever. This offer is not a firm offer and may be revoked or withdrawn at any time prior to your acceptance (or deemed acceptance). This offer is for acceptance by you within thirty (30) days and is subject to change or withdrawal at any time prior thereto without notice.
4. Packaging and Risk of Loss Unless otherwise stated, prices cover bulk packaging only. Risk of loss is upon you at all times after the goods are delivered to a carrier at Seller's plant.
5. Taxes You agree to pay any and all sales taxes, tariffs, surtaxes, excise taxes, and use taxes which either you or Seller may become legally liable for as a result of this transaction.
6. Patents You assume all liability for infringement of patents, copyrights, or trademarks, and agree to defend, indemnify, and hold harmless Seller against any claims arising from such infringement.
7. Delays Seller shall not be responsible for any delay in performance or delay in delivery caused by force majeure or other circumstances beyond its control including, but not limited to, an act of God, fires, floods, wars, government actions, accidents, labor troubles, labor shortages, unavailability of materials, unavailability of equipment, or unavailability of transportation.
8. WARRANTIES DISCLAIMER OF ALL OTHER WARRANTIES Seller warrants that the goods sold hereunder shall substantially conform to the description and specifications set forth in or appended to this offer, subject to the customary mill tolerances and normal variations consistent with good mill practices and inspection methods with respect to dimension, weight, straightness, section, composition, mechanical properties, surface and internal conditions and quality. THERE ARE NO EXPRESS WARRANTIES INVOLVED IN THIS TRANSACTION OTHER THAN THAT THOSE WARRANTIES STATED HEREIN. THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THE DESCRIPTION APPEARING ON THE FACE HEREOF. THE FOREGOING IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES WHATSOEVER, WHETHER EXPRESS OR IMPLIED IN LAW OR STATUTE INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE NOTWITHSTANDING THE FOREGOING. IN THE EVENT AND TO THE EXTENT THAT ANY OF THE GOODS COVERED HEREBY (OR ANY COMPONENTS THEREOF) ARE MANUFACTURED OR PROCESSED BY ANY THIRD PARTY, THEN SELLER'S SOLE OBLIGATION WITH RESPECT TO SUCH GOODS (OR COMPONENTS) SHALL BE TO YOU (IF AND TO THE EXTENT ASSIGNABLE) ALL WARRANTIES MADE OR GIVEN TO SELLER BY SUCH THIRD PARTY MANUFACTURER AND/OR PROCESSOR: IN SUCH EVENT, SELLER GIVES NO OTHER WARRANTIES OF ANY KIND OF NATURE WHATSOEVER INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ALL OF WHICH WARRANTIES ARE FULLY AND FOREVER DISCLAIMED.
9. Claims for Defective Goods Any claims for breach of warranty (if any) must be reported in writing to Seller, in sufficient detail to fully apprise Seller of the claimed defect within thirty (30) days after delivery of the goods at the destination specified by you. No goods which are claimed to be defective shall be returned to Seller without first notifying Seller in writing and receiving shipping instructions from Seller. In all events, the transportation charges on returned goods will be paid by you. Any such goods so returned shall, at Seller's election (exercisable in Seller's sole discretion), be replaced as originally ordered. If Seller elects not to replace the defective goods properly returned to seller then the price paid by you for such goods shall be credited to you. Any goods returned for either replacement or credit, must be returned in full in order to receive replacement goods or credit. IT IS AGREED THAT THE SELLER'S LIABILITY, IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, FOR DAMAGES ARISING FROM ANY DEFECTIVE GOODS SUPPLIED BY PTG IS LIMITED TO THE REPLACEMENT OF THE DEFECTIVE GOODS OR TO THE PRICE OF THE DEFECTIVE GOODS AND THAT SELLER WILL NOT BE LIABLE IN ANY EVENT FOR LOSS OF USE OR INDIRECT, CONSEQUENTIAL OR INCIDENTAL DAMAGES OF ANY TYPE WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION AND THE LIKE), EVEN IF SELLER IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FURTHERMORE, YOU HEREBY RELEASE SELLER FROM ALL OBLIGATIONS, LIABILITIES, CLAIMS OR DEMANDS IN EXCESS OF SUCH LIMITATION. SELLER SHALL NOT IN ANY EVENT BE LIABLE FOR THE COST OF ANY LABOR EXPENDED, INSPECTION, OR MACHINING PERFORMED ON ANY SUCH GOODS. THERE SHALL BE NO REVOCATION OF ACCEPTANCE AND BUYER HEREBY EXPRESSLY WAIVES ANY AND ALL RIGHTS TO REVOKE ACCEPTANCE. BUYER MAY REJECT THE GOODS COVERED HEREBY ONLY FOR DEFECTS SUBSTANTIALLY IMPAIRING THEIR VALUE AND FOR NO OTHER REASON. BUYER'S EXCLUSIVE REMEDIES FOR LESSER DEFECTS SHALL BE FOR BREACH OF ANY EXPRESS WARRANTY, AND THEN ONLY TO THE EXTENT APPLICABLE TO ANY EXPRESS WARRANTY CONTAINED HEREIN. THE PARTIES ACKNOWLEDGE THAT OTHER PROVISIONS OF THIS AGREEMENT RELY UPON THE INCLUSION OF THIS SECTION AND THE RESULTING ALLOCATION OF RISKS. PTG's liability for damages to customer-supplied material shall not exceed the amount of the original purchase order price for services to the subject goods.
10. Damages In the event you wrongfully reject, revoke, or unduly delay acceptance of the goods covered hereby Seller, at its sole election, shall have the right to recover as damages either (I) the purchase price of the goods whereupon the goods in such condition as they may then exist shall become your property, or (II) the profit (including reasonable overhead) realizable by the Seller upon full performance. In either event, Seller may recover all incidental damages and reasonable costs, including, in the event Seller elects the remedy expressed in clause (I) above, all reasonable charges for storage, handling and preservation of the goods until the same are claimed by you. Seller's remedies set forth in this paragraph are supplemental to, and not in lieu of, any and all remedies otherwise available to Seller at law, in equity, or hereunder.
11. Claims for Shortages All claims for shortages must be made in writing ten (10) days after delivery of the goods at the destination specified by you.
12. Raw Materials Where the materials out of which the goods to be sold hereunder are specified, Seller warrants that all goods supplied hereunder will be manufactured from such materials which are so designated or described by the manufacturer or supplier of the raw materials. However, Seller shall not in any event be liable for, and you assume the entire risk of all losses caused by, any deficiencies, limitations, modification, or variations in the specified raw materials, which materials are designated or described by the manufacturer or supplier thereof in a manner which conforms to the specifications.
13. Indemnity You assume all liability (including but not limited to liability for injury to person or property, death, economic loss or business interruption) for claims arising from the sale or use of the goods or products covered by this Agreement. You further agree to defend, indemnify, and hold harmless Seller, its officers, directors, employees and agents from any and all claims, demands, actions or suits arising from the sale or use of any goods or product covered by this Agreement except for losses caused solely by the gross negligence of Seller, and you will reimburse such indemnified parties, and each of them, for any legal and other expenses reasonably incurred in connection with investigating or defending any such claim, damage, action nor suit and any amount paid in settlement of any such claim, demand action or suit. Such indemnified parties may, but shall not be obligated to permit you to assume the defense of any resulting litigation provided that your counsel who will conduct the defense of such claim or litigation will be approved by Seller, whose approval may be withheld for any reason or for no reason. You will not consent to the entry of any judgment or enter into any settlement without the consent of the Seller, which consent may be withheld for any reason or no reason. Seller will have the right to employ its own counsel in any such action, but the fees and expenses of such counsel will be at your expense. In the event Seller approves your counsel to defend such indemnified parties and if (I) Seller will have been advised by counsel chosen by it that there may be one or more legal defenses available to one or more of the indemnified parties which are different from or additional to those available to and which have not been asserted by you, (II) Seller reasonably concludes that there is a conflict of interest between you and one or more of such indemnified parties in the conduct of the defense of such action or (III) your counsel ceases the defense of such action without the consent of Seller, which consent may be withheld for any reason or no reason: then you will not have, at the election of Seller, the right to continue the defense of such claim or action on behalf of such indemnified parties and you will reimburse such indemnified parties for the reasonable fees and expenses of any counsel retained by such indemnified parties to undertake the defense. If recovery is not available under the foregoing indemnification provisions for any reason other than as specified herein, such indemnified parties shall be entitled to contribution for liabilities and expenses, except to the extent contribution is not permitted by law.
14. Security Agreement For so long as any amount remains to be paid by you to Seller, whether such obligation arose under this transaction or any other transaction between you and Seller (collectively the "secured obligations"), then Seller shall have, and you hereby grant to Seller, a lien and security interest in and to the goods sold hereby to you (the "collateral") as security for the payment and/or performance of the secure obligations. You hereby grant to Seller the power of attorney to sign and deliver any and all financing statements on your behalf with respect to the foregoing security interest and expressly authorize Seller to file or record the same with the appropriate governmental agency for perfection of such security interest. In the event you fail to perform any secured obligation in strict accordance with its terms, Seller shall have the right to declare all secured obligations immediately due and payable and, further, to pursue all such rights and remedies as to the collateral as are available under the Uniform Commercial Code, as well as all such other rights as are available at law, by statute or in equity.
15. Limitation Period If either party to this Agreement desires to bring an action against the other party for breach of this Agreement, including, without limitation, any action by you against the Seller for the alleged breach of any warranty, the time within the action must be commenced shall be one year after the accrual of the cause of action as defined by Section 2-725 (2) of the Uniform Commercial Code.
16. Jurisdiction The rights and obligation of the parties under this Agreement shall not be governed by the provisions of the 1980 United Nations Convention on Contracts for the International Sale of Goods. This Agreement shall be governed and construed, in all respects, in accordance with the laws of the State of California, including, with limitation its adopted provisions of the Uniform Commercial Code, and without regard to the conflict of laws provisions of California law. Any controversy or claim or dispute arising out of or related to this contract shall be litigated only in a court of the State of California.
17. Legal Codes If any legal proceeding is brought for the enforcement or interpretation of any term, provision or covenant set forth herein, or because of a dispute, or an alleged breach default or misrepresentation in any way connected herewith, or with any provision hereof, the prevailing party shall be entitled to recover from the losing party the reasonable attorney's fees and other costs incurred in that action or proceeding or in any appellate proceeding relating thereto, such amount to be set by the court(s) before which the matter is tried, heard, or decided.
18. Records Retention Performance Titanium Group maintains hard copies of records for a maximum of 7 years unless otherwise agreed to in writing.