

Terms and Conditions

Exclusive Terms

This agreement shall constitute the complete Agreement between Purchaser and **Titan Hardware, Inc.** AKA Titan Hardware Int'l (herein called 'Seller') and shall supersede all prior oral and written statements of any kind whatsoever made by the parties and their representatives. All terms and conditions herein or hereafter contained in Purchaser's orders or elsewhere which are different from, in addition to, in conflict with or vary the terms hereof are hereby objected to and shall not be binding on Seller, unless expressly agreed to in writing, signed at Seller's home office in Downey, California, by a duly authorized officer of Seller in a document making specific reference to this Agreement and specifically stating that it 'amends' this Agreement.

Acceptance of Order: Seller's acceptance of any order is expressly conditioned upon Purchaser's assent to the terms and conditions of sale set forth herein.

Prices: All prices are subject to change without notice. Any firm price or special conditions must be approved in writing by the main office prior to shipment. Due to fluctuating exchange rates, prices are firm only at time of shipment unless previously agreed to in written form.

Cancellation: All cancellations of orders are subject to a service charge to cover the costs of initial processing or production of the order. Orders for items which are specially plated and or modified for customer, are not subject to cancellation or return. Mill shipment or contract order are subject to cancellation.

Terms: If Purchaser fails to pay any invoice on due date, in addition to any of its other rights or remedies but not in limitation thereof, Seller reserves the right to withhold further deliveries or terminate any contract with Purchaser. Any unpaid amounts shall then become immediately due and payable.

Terms of Payment: Shipments and deliveries shall at all times be subject to approval of Purchaser's Credit and Seller at any time may require payment in advance or satisfactory security or guarantee that invoices will be promptly paid when due. Except as otherwise provided, the terms shall be net thirty (30) days from date of Seller's invoice. If account is referred for collection or suit, customer agrees to pay reasonable attorney or collection agent fees of not less than 25% of the balance past due.

Interest: Purchaser agrees to pay interest at the rate of 1-1/2 % per calendar month on any unpaid balance over 30 days old.

New Accounts: Credit approval by our credit department is required for open account terms. Please submit four credit references with initial order to expedite approval. Pending approval orders will require C.O.D. shipments or must be prepaid with credit card. Credit application must be signed. Companies with insufficient credit must also have the personal guaranty signed by the principles of the company.

Freight Policy: All goods are shipped and invoiced F.O.B. factory or warehouse location, Prepaid and added to invoice (unless otherwise agreed). All shipments charged at cost plus a \$2.00 handling charge per shipment. Orders shipped on pallets may incur an additional \$5.00 per pallet charge. If not specified by Purchaser, Seller will use their own discretion in choosing carrier and service. Purchaser, may request the use of a particular carrier or service. All such requests must be in writing with complete, valid and legible "ship to" address clearly stated. All such shipments will be sent freight collect at purchaser sole expense. Purchaser must supply in writing purchaser's account number for their requested carrier. Seller is not responsible for any shipment delays nor for damage or missing merchandise when shipping freight collect. Damage can occur from rough handling by carriers, and the amount of this damage or missing merchandise is collectible by Purchaser from the carrier upon **presentation of proper claim with the carrier.**

Damaged & Missing Merchandise: Damage and loss of merchandise can occur from rough handling by carriers. If you find damage upon receiving the shipment, or if box count does not match delivery receipt, **note and describe the damage and discrepancy on the delivery receipt before signing for the merchandise.** If the damage or loss is severe, you may refuse the shipment if you notify seller immediately. The carrier will furnish proper forms for your claim. **DO NOT RETURN DAMAGED MERCHANDISE TO US,** once you have signed for the merchandise, without an RGA from seller. The carrier is responsible for the shipment when it is picked up from our factory and/or warehouse. If damage is returned to us no claim can be filed.

Limitation of Liability: Seller shall not be liable for consequent, special or contingent damages arising from breach of warranty, breach of contract, negligence or any other legal theory. Such damages include, but are not limited to, loss of profits or revenue, loss of the use of the goods, or any associated goods or equipment, cost of capital, cost of any substitute goods, facilities or services, downtime costs, or claims of Purchaser's customers for such damages. The discharge or Seller's warranty obligation hereunder shall constitute fulfillment of all liabilities of Seller to Purchaser, whether based on contract, negligence or otherwise with respect to the goods sold or provided hereunder. The remedies set forth herein shall be the exclusive remedies available to the Purchaser and in lieu of all other remedies, and the liability of Seller, whether in contract, in tort, under any warranty or otherwise, shall not exceed the price of the goods sold, supplied or furnished by Seller hereunder on which liability is based. Seller neither assumes nor authorizes any representative or other person to assume for it any obligation or liability other expressly set forth herein. Any suit or action arising out of or relating to this Agreement or the breach thereof must be commenced within one (1) year after the cause of action has accrued. The foregoing shall not limit the time within which any suit or action must be brought to collect an amount agreed to be paid by Purchaser or to enforce a judgment or to collect any amount awarded there under. The sole purpose of the

stipulated exclusive remedy shall be to provide Purchaser with a credit or replacement for, or the repair of, defective parts in the manner provided herein. This exclusive remedy shall not be deemed to have failed of its essential purpose so long as Seller is willing to credit Purchaser's account or repair or replace the defective part(s) in the manner prescribed herein.

Purchaser's Agreement to Defend: If any goods sold or supplied to Purchaser by Seller are not maintained and used in accordance with recommended procedures, purchaser agrees to defend, protect and save Seller harmless against all suits at law or in equity and from all costs of suit, legal fees and expenses, damages, claims and demands arising out of or awarded in connection with such sale or supplying.

Claims: All claims must be made within 10 days after receipt of goods. Risk and liabilities for the goods supplied falls upon Purchaser upon leaving the factory or warehouse of the Seller.

Minimum Order: Our minimum invoice is \$100.00. Orders less than \$100.00 are subject to a \$20.00 handling charge. No samples can be returned. No free samples over \$5.00 in value.

Shipments: All shipments within plus or minus 10% of the ordered quantity shall be accepted by the purchaser and be considered complete.

Packaging: All packing is available. Specify packing when placing order. All prices, packing, weights, finishes, measurements and designs are subject to correction and we are not responsible for errors. Purchaser requested packaging may incur additional cost

Deliveries: Seller does not assume responsibility for damages due to default or delay in production or delivery of all or any portion of any other resulting directly or indirectly from:

- 1) accident to, or breakdowns of Seller's plant machinery or equipment; embargoes; fire; riots; national emergency; delays of suppliers; carries, or governmental restrictions, prohibitions, or allocations; or
- 2) any cause beyond the control of Seller. In no event shall Seller be liable for any consequential, special, or contingent damages arising out of Seller's default or delay in filling this order.

Dies, Tools, Drawings. etc.: Tools, dies, jigs, fixtures, gauges, and their engineering and design, are integral parts of Seller's manufacturing processes. Therefore, separate quotation to, or payment by Buyer for these items or engineering costs related to these items, supplied by Seller, conveys neither ownership nor the right of removal from Seller's factory.

Engineering Responsibility: Purchaser releases seller of any liability relating any item engineering or product design produced by Seller. Seller or it's representatives are **not** licensed engineers. Titan Hardware does not warrant the accuracy of any technical information supplied. This information is supplied free of charge and should not be sued for engineering purposes. Purchaser is hereby advised to retain their own qualified engineering professional.

Return of Merchandise: No returns of merchandise will be accepted without the prior written approval of the main office in the form of Return Goods Authorization (RGA). With official return authorization, returns will be accepted for credit only against future purchases and no refund for any return credit will be made. The following conditions apply:

- 1) All returns are subject to 20% restocking charge.
- 2) All returns Computed on current price or sales price, whichever is lower and,
- 3) All returns accepted only on a freight prepaid basis unless otherwise agreed to by seller.
- 4) All returns must be requested within 30 days of receiving the merchandise in question.
- 5) No returns will be accepted for any merchandise that has been plated, repackaged, or otherwise modified by Titan Hardware at your request. .
- 6) All merchandise must be returned in original condition and in original Titan Hardware packaging.

Restriction of Revocation of Acceptance: Any attempt by Purchaser to revoke acceptance for any reason whatsoever after he has accepted any shipment, shall constitute a breach of this Agreement.

Warranty: Our warranty is limited to shipping a replacement for any defective item providing a written claim is made 10 days from the receipt of goods. We will not allow or pay any claims resulting from use of such items, or any consequential damages. This warranty is in lieu of any and all other warranties and liabilities expressed or implied, including but not limited to any warranty of merchantability or fitness for any purpose and any liability for consequential damages arising out of the use of the products sold hereunder. Seller shall not be liable for consequential operational or contingent damages arising from this warranty, breach of contract, breach of warranty, negligence or any other legal theory. Seller will no event be liable for any consequential, special or contingent damage or expense arising directly or indirectly from any defect in its goods or from the use thereof, nor any other person authorized to assume for Seller any such liability. Such damages include but are not limited to loss of profits or revenue, loss of the use of the goods or any associated goods or equipment, cost of any substitute goods, facilities or services, downtime costs, cost of capital or claims of Purchaser's customers for such damages or arising out of the use of the products sold hereunder. The foregoing warranty states Seller's entire and exclusive liability and Purchaser's exclusive and sole remedy whether based on contract, negligence or otherwise. The remedy set forth herein shall be the exclusive remedy available to the Purchaser. The liability of the Seller whether

in contract, tort or under any warranty or otherwise, shall not exceed the price of the goods sold. Damage to the product by accident, misuse, abuse, modification or misapplication or by improper service or installation voids our warranty.

Taxes: Any applicable federal, state, local or other government tax or charge on the sale or shipment of the goods covered by this Agreement shall be added to the price and paid by Purchaser. Purchaser agrees to hold harmless Seller from all such taxes, including interest and penalties thereon, any costs and expenses in connection therewith.

Catalog and Web-site material: All material and documentation supplied to Purchaser or parties directly or indirectly are subject to Sellers "Terms of Use" agreement.

Assignment: Purchaser may not assign or hypothecate this Agreement, or any interest therein, either voluntarily or by operation of law, without the express written consent and approval of Seller. In the event an attempted assignment is made in violation of this provision, then the rights of Purchaser under this Agreement shall automatically terminate without notice.

Default: Failure by Seller to exercise his remedies upon any default or breach on the part of Purchaser shall not be, or be construed as, a waiver thereof, nor shall any waiver of a particular breach or default be deemed to be a waiver of the same or any subsequent breach or default.

Entire Agreement: This instrument contains the entire Agreement between the parties. Any oral representations shall be of no force and effect excepting a subsequent modification in writing, signed by the part to be charged.

Attorneys Fees: In the event of any controversy, claim or dispute between the parties hereto, arising out of or relating to this Agreement or the breach thereof, including but not limited to any action required to be taken to enforce the terms and conditions of this Agreement. The prevailing party or the party seeking enforcement of said agreements shall be entitled to, upon demand, payment of any and all reasonable costs and expenses, including, but not limited to, attorneys fees incurred as a result thereof, whether or not suit be instituted.

Binding Effect: This Agreement shall bind and inure to the respective heirs, personal representatives, successors and assigns of the parties hereto, except as herein above expressly provided.

Jurisdiction: This Agreement shall be governed by a construed in accordance with the laws of the State of California. If any legal action is necessary to enforce the terms and conditions of this Agreement, the parties agree that the Superior Court of California, County of Los Angeles, shall be the sole venue and jurisdiction for the bringing of such action.

Partial Invalidity: If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated.