

Purchase Order Form – General Terms & Conditions

THESE CONDITIONS MAY ONLY BE VARIED WITH THE WRITTEN AGREEMENT OF THE PURCHASER. NO TERMS OR CONDITIONS PUT FORWARD AT ANY TIME BY THE SUPPLIER SHALL FORM ANY PART OF THE PURCHASE ORDER. UNLESS THEY ARE SPECIFICALLY EXCLUDED IN WRITING AND SIGNED BY DYNAMIC METALS LIMITED ("THE COMPANY")

1. Interpretation

1.1 In this Purchase Order:-

- a) "Agreement" means the Purchase Order and General Terms & Conditions attached to the Purchase Order
- b) "Change of Control" means change in company ownership, company name, manufacturing location, quality approval process or any significant changes to process or inspection techniques.
- c) "Confidential Information" means information belonging or relating to the Purchaser, its business affairs or activities not in the public domain including but not restricted to all versions of electronic data, drawings and documentation, tooling and materials.
- d) "Purchaser" means person named as the Purchaser in the Purchase Order Form and includes the Purchaser's Representative
- e) "Supplier" means the person named as the Supplier in the Purchase Order Form, his permitted successors and assigns
- f) "Purchase Order" means a completed purchase order form issues by Dynamic Metals Limited for the supply of goods set out in the purchase order
- g) "Goods" means such goods as are to be supplied to the Purchaser by the Supplier pursuant to the Purchase Order
- h) "Specification" means the technical and general description of the characteristics or requirements as requested by the company or defined by the supplier and on the basis on which the order was placed
- i) "Parties" means the Purchaser and the Supplier
- j) "Approval" and "Approved" refer to the written consent of the Purchaser's Representative
- k) "Non conforming Goods" means any Goods that have failed any quality control either before or after delivery
- l) "Order Value" means the Price of the goods, inclusive of all taxes and duties which are applicable and delivery costs
- m) "Premises" means the premises or facility in which the goods have been designed, manufactured or dispatched from or to

2. Entire Agreement

- 2.1 The Purchase Order constitutes the entire agreement between the Parties relating to the subject matter of the Purchase Order. The Purchase Order supersedes all prior negotiations, representations and understandings, whether written or oral except for any special conditions ("Special Conditions") duly negotiated and accepted in writing by the Company and the supplier.
- 2.2 The fact that the Company fails to invoke one of these Terms and Conditions at any time cannot be construed as a waiver to subsequently invoke the same provision.

3. The Goods

- 3.1 The quantity, quality of the Goods shall be to the reasonable satisfaction of the Purchaser and shall conform to all specifications in the Purchase Order Form and all other requirements of the Purchase Order.
- 3.2 The Goods shall be fit and sufficient for the purpose for which such goods are ordinarily used. The Purchaser relies on the skill and judgment of the Supplier in the supply of the Goods and the performance of the Purchase Order.

4. Purchase Order Value

- 4.1 The Purchaser shall pay the Order Value to the Supplier in consideration of the supply of the Goods in accordance with the Purchase Order inclusive or all taxes, duties and delivery costs.

5. Invoicing and Conditions of Payment

- 5.1 The Supplier shall submit an invoice containing all appropriate references notably the Purchase Order number to the Company's Accounts Payable Department in respect of each consignment delivered under the Purchase Order.
- 5.2 The Company will pay within 30 days of receipt of a valid invoice
- 5.3 Any Invoice disputed by the Company will not be paid until the dispute is finally resolved.

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6. Delivery

- 6.1** Carriage / freight costs shall be at the Supplier's expense. Unless otherwise agreed in writing with the Purchaser.
- 6.2** The Goods shall be delivered to the place named in the Purchase Order Form.
- 6.3** If the Purchase Order stipulates collection of the Goods directly from the Supplier, the Supplier undertakes to pack the said Goods under the same conditions as for delivery to the Company's premises. If damage occurs during transport which is due to unsuitable or defective packaging, the Supplier undertakes, as the Company decides either (i) immediately replace the damaged Goods and them available to the Company or (ii) to immediately refund the Company the price already paid, without prejudice to the damages for the loss suffered or (iii) deliver the Goods in perfect condition with the deadline agreed with the Company.
- 6.4** The time of delivery shall be of the essence. Failure to deliver within the time specified in the Purchase Order shall entitle the Purchaser (at his option) to release himself from any obligation to accept and pay for the Goods and/or to cancel all or part of the order for the Goods, in either case without prejudice to his other rights and remedies pursuant to the Purchase Order.

7. Property and Risk

- 7.1** Property and risk in the Goods shall pass to the Purchaser at the time of delivery, without prejudice to any of the rights or remedies of the Purchaser pursuant to the Purchase Order.

8. Damage in Transit

- 8.1** On dispatch of any consignment of the Goods the Supplier shall send to the Purchaser at the address for delivery of the Goods an advice note specifying the means of transport, the place and date of dispatch, the number of packages and their weight and volume.
- 8.2** Where the Goods are either damaged in transit or having been placed in transit fail to be delivered to the Company, the Company shall either elect to reject the consignment; or request the Supplier to repair or replace the damaged Goods, and deliver the repaired or replaced Goods in accordance with the timescales specified in the Purchase Order provided that the Company has notified the Supplier with 30 days of delivery or the notified date of delivery about such damage or non-delivery.

9. Inspection, Rejection and Guarantee

- 9.1** Upon reasonable notice the Supplier shall allow the Purchaser or his authorised representatives to make any inspections or tests he may reasonably require and the Supplier shall provide all reasonable facilities and assistance free of charge at his Premises. No failure to make complaint at the time of such inspections or tests and no approval given during or after such inspections or tests shall constitute a waiver by the Purchaser of any rights or remedies in respect of the Goods.
- 9.2** The Purchaser may by written notice to the Supplier reject any of the Goods which fail to meet the requirements specified in the Purchase Order. Such notice shall be given within a reasonable time after delivery of the Goods concerned. If the Purchaser rejects any of the Goods pursuant to this Condition, the Purchaser shall be entitled (without prejudice to his other rights and remedies) either:
- a)** to have the Goods concerned as quickly as possible either repaired by the Supplier or (at the option of the Purchaser) replaced by the Supplier with Goods which comply in all respects with the requirements of the Purchase Order; or
 - b)** to obtain a refund from the Supplier in respect of the Goods concerned.
- 9.3** The guarantee period applicable to the Goods shall be 12 months from putting into service or 18 months from delivery, whichever shall be the shorter. If the Purchaser shall within such guarantee period or within 30 days thereafter give written notice to the Supplier of any defect in any of the Goods which arises during such guarantee period under proper and normal use, the Supplier shall as quickly as possible remedy such defects (whether by repair or replacement at the option of the Purchaser) without cost to the Purchaser and without prejudice to any other rights or remedies of the Purchaser.
- 9.4** Any Goods rejected or returned pursuant to Condition 9.2 or 9.3 shall be returned to the Supplier at the Supplier's risk and expense.

10. Warranties

- 10.1** The Supplier warrants to the Company that the Goods delivered conform with respect to their manufacture, to the Specifications and that they are fit for their purpose.

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11. Audit Rights

- 11.1** The Supplier shall keep and maintain until 10 years after the Agreement has been completed, or as long a period as may be agreed between the Parties, full and accurate records of the Agreement including:
- a) All drawings
 - b) Specifications
 - c) Procedures
 - d) Any other relevant documents which may be agreed between the Parties
- 11.2** The Supplier shall allow the Purchaser or his authorised representatives at all reasonable times and upon reasonable notice to inspect and take copies or extracts from such records and to the extent reasonably necessary for the purpose of verifying the proper performance by the Supplier of its obligations pursuant to this Agreement.

12. Intellectual Property Rights

- 12.1** The Supplier shall take all necessary measures to ensure that the Goods will not infringe any Intellectual Property Rights of any third party. The Supplier shall indemnify the Purchaser against all claims, proceedings, actions, damages, costs, expenses and any other liability or loss incurred by the Purchaser by reason of the possession or use by the Purchaser of any Goods, or other material delivered by the Supplier, which involves any infringement or alleged infringement of the Intellectual Property Rights of any third party. The provisions of this Condition 12.1 shall not apply in respect of any Goods or other materials which are made up in accordance with designs provided by the Purchaser.
- 12.2** All rights (including ownership and Intellectual Property Rights) in any specifications, instructions, plans, drawings, patterns, models, designs or other material provided or made available to the Supplier by the Purchaser pursuant to the Purchase Order shall remain vested solely in the Purchaser. Except to the extent necessary for the implementation of the Purchase Order, the Supplier shall not without prior Approval use or disclose any such specifications, plans, drawings, patterns, models or designs or other material which the Supplier may obtain pursuant to the Purchase Order.

13. Health and Safety

- 13.1** The Supplier shall take all reasonable measures to ensure that all necessary tests and examinations have been made or will be made prior to delivery of the Goods to ensure that the Goods are designed and constructed so as to be safe and without risk to the health or safety of persons using the Goods. The Supplier shall make available to the Purchaser adequate information about the use for which the Goods have been designed and tested and about any conditions necessary to ensure that when put to use the Goods will be safe and without risk to health. The Supplier shall indemnify the Purchaser against all claims, proceedings, actions, damages, costs, expenses and any other liability or loss incurred by the Purchaser as a result of any breach of this Condition.
- 13.2** The Supplier shall take all measures necessary to comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other Acts, orders, regulations and Codes of Practice relating to health and safety, which may apply to the Supplier in the performance of the Purchase Order.

14. Indemnity and Insurance

- 14.1** Without prejudice to any other rights or remedies of the Purchaser pursuant to the Purchase Order, the Supplier shall indemnify the Purchaser against all claims, proceedings, actions, damages, costs, expenses and any other liability or loss incurred by the Purchaser in respect of any death or personal injury, or loss of or damage to property, to the extent that such death or injury, or loss or damage, is caused directly or indirectly by any defect in the Goods or any wrongful act or omission of the Supplier, its employees sub contractors or agents.
- 14.2** The Supplier shall effect and maintain with a reputable insurance company a policy or policies of insurance covering all the matters which are the subject of indemnities under these Conditions. The Supplier shall produce to the Purchaser's Representative, on request, copies of the relevant policy or policies or other evidence confirming the existence and extent of the cover given by those policies, together with receipts or other evidence of payment of the latest premiums due under those policies. The terms of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under the Purchase Order. It shall be the responsibility of the Supplier to determine the amount of insurance cover that will be adequate to enable the Supplier to satisfy any liability referred to in this Condition 14.2.

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15. Recovery of Sums Due to Purchaser

- 15.1** Whenever under the Purchase Order any sum of money is recoverable from or payable by the Supplier (including any sum which the Supplier is liable to pay to the Purchaser in respect of any breach of the Purchase Order), the Purchaser may unilaterally deduct that sum from any sum then due or which at any later time becomes due to the Supplier under the Purchase Order or under any other contract with the Purchaser or with any other department, office or agency of the Crown.
- 15.2** The Purchaser shall give at least 14 days' notice to the Supplier of his intention to make a deduction under Condition 15.1, giving particulars of the sum to be recovered and the contract under which the payment arises from which the deduction is to be made.
- 15.3** Any overpayment by the Purchaser to the Supplier shall be a sum of money recoverable by the Purchaser from the Supplier.

16. Confidentiality

- 16.1** The Supplier will maintain the confidentiality of the Purchaser's Confidential Information and shall not, without the prior written consent of the Purchaser, use, disclose, copy or modify the Purchaser's Confidential Information other than as necessary for the performance of its rights and obligations under the Agreement.
- 16.2** The obligations imposed by Clause 19.1 shall continue to apply after the expiry or termination of the Purchase Order

17. Transfer and Sub-Contracting

- 17.1** The Supplier shall not assign, sub-contract or in any other way dispose of the Purchase Order or any part of it no limited to Heat treatment, Coating, NDT, Chemical Processing, NMSE without prior written approval of the Purchaser.
- 17.2** Assigning or sub-contracting any part of the Agreement shall not relieve the Supplier of any obligation or duty attributable to the Supplier under this agreement. The Supplier shall be responsible for the acts and omissions of its sub-contractors as though they are its own.

18. Notification of Change of Control

- 18.1** The Supplier shall immediately notify the Purchaser prior to their being a change of control within the Supplier. Notification will be in accordance with clause 21.1.

19. Non Conforming Goods

- 19.1** The Supplier shall immediately notify the Purchaser should it identify any non conforming goods issues either shipped or at the Suppliers premises. Notification will be in accordance with clause 21.1.

20. Non Solicitation

- 20.1** The Supplier shall during the course of the Agreement or within a period of 6 months of the termination or expiry of the Agreement approach directly or indirectly any customer of the Supplier with a view to entering into business dealings to the them.

21. Service of Notices and Communications

- 21.1** Any notice or other communication which is to be given by either Party to the other pursuant to the Purchase Order shall be given by letter, or by facsimile transmission or electronic mail confirmed by letter. Such letters shall be delivered by hand or sent prepaid by first class post to the address of the other Party. If the other Party does not acknowledge receipt of any such letter, facsimile transmission or item of electronic mail, and the relevant letter is not returned as undelivered, the notice or communication shall be deemed to have been given 3 working days after the day on which the letter was posted.

22. Termination on Insolvency

- 22.1** The Purchaser may terminate the Agreement by written notice having immediate effect if, where the Supplier is an individual or a firm, the Supplier or any partner in the firm is declared bankrupt or is subject to a debt relief order or a debt relief restriction order; or where the Supplier is a company, the company passes a resolution or the Court makes an order that the company be wound up otherwise than for the purpose of solvent reconstruction or amalgamation.

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23. Prevention of Bribery Corruption

- 23.1** The Supplier warrants and covenants that it and its staff shall comply with any applicable Law in force from time to time regarding bribery, fraudulent acts and/or any other corrupt practice including (a) the Bribery Act 2010, (b) Anti Terrorism, Crime and Security Act 2001, (c) the US Foreign Corrupt Practices Act of 1977 and (d) any equivalent Laws in the territory in which the Supplier or its Associates perform services for the Purchaser ("Anti-bribery laws).
- 23.2** Without limiting clause 21.1 the Supplier represents, warrants and undertakes that it shall procure that its staff and any other third party that perform services on its behalf will comply with the Anti- bribery laws.
- 23.3** If the Supplier, his Staff or any subcontractors, or anyone acting on his or their behalf, does any of the prohibited acts or commits any offence under the Anti-bribery laws, whether with or without the knowledge of the Supplier, the Supplier shall be entitled to terminate the Agreement and recover from the Supplier the amount of any loss resulting from the termination and the amount or value of any such gift, consideration or commission.

24. Severability

- 24.1** If any provision of the Purchase Order is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the Purchase Order shall continue in full force and effect as if the Purchase Order had been executed with the invalid, illegal or unenforceable provision eliminated. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Purchase Order, the Parties shall immediately commence negotiations in good faith to remedy the invalidity.

25. Waiver

- 25.1** The failure of either Party to exercise any right or remedy shall not constitute a waiver of that right or remedy. No waiver shall be effective unless it is communicated to the other Party in writing. A waiver of any right or remedy arising from a breach of the Purchase Order shall not constitute a waiver of any right or remedy arising from any other breach of the Purchase Order.

26. Variation

- 26.1** The Purchase Order shall not be varied unless such variation is agreed by the Parties in writing.

27. Termination on Breach

- 27.1** The Purchaser may terminate the Purchase Order by written notice to the Supplier with immediate effect if the Supplier is in breach of the Purchase Order and:
- a) the Supplier has not remedied the breach to the satisfaction of the Purchaser within 30 days, or such other period as may be specified by the Purchaser, after service of written notice specifying the breach and requiring it to be remedied; or
 - b) the breach is not capable of remedy; or
 - c) the breach is a fundamental breach of contract.

28. Dispute Resolution

- 28.1** The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Purchase Order. By agreement, the Parties may refer a dispute to mediation by a neutral adviser or mediator appointed by the Parties or by the Centre for Dispute Resolution. Unless otherwise agreed, all negotiations occurring in the course of such mediation shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.

29. Law and Jurisdiction

- 29.1** This Purchase Order shall be governed by and interpreted in accordance with the law of England and Wales and shall be subject to the exclusive jurisdiction of the Courts of England and Wales.