

DYNAMIC METALS LIMITED

TERMS AND CONDITIONS

PLEASE READ THESE TERMS AND CONDITIONS CAREFULLY AS THEY AFFECT YOUR RIGHTS AND LIABILITIES UNDER THE LAW AND SET OUT THE TERMS UNDER WHICH WE MAKE OUR GOODS AVAILABLE TO YOU

1 General

- 1.1 'We', 'us' or 'our' is a reference to Dynamic Metals Limited, and 'you' or 'your' is a reference to the person or entity to whom we are supplying goods and who is required to pay for the goods we supply.
- 1.2 By placing an order with us you are offering to purchase goods on and subject to the following terms and conditions (the "Terms"). You agree to be bound by all the provisions set out in the Terms. Any order accepted by us is to be deemed to incorporate the Terms. The Terms shall apply to all orders you place with us.
- 1.3 No variation or amendment that you make to the Terms shall be binding on us unless explicitly accepted by us in writing. We reserve the right to vary or amend the Terms at any time prior to our acceptance of any order and you will be given the opportunity to agree to any variations or amendments.

2 The contract between us

- 2.1 You can request a quotation for goods that we offer by telephone to +44 1525 217556, email to sales@dynamicmetalsltd.co.uk.
- 2.2 We will respond to your quotation with details such as (but not limited to) specification / grade of material offered, price of material, estimated delivery time and any extra charges (such as delivery costs, heat treatment costs, testing costs etc) (the Quotation Response) which shall also require you to make a formal purchase order based on the Quotation Response (the Purchase Order). The details given in the Quotation Response are subject to change and we will notify you immediately if such a change occurs.
- 2.3 To make a formal order for purchase you must send us the Purchase Order which must contain details of what you are ordering to purchase in accordance with the Quotation Response; this Purchase Order constitutes an offer made to us to purchase goods as specified therein.

- 2.4 We will contact you by email at the email address you provide, or telephone to confirm our acceptance of your order (the Order Confirmation) which brings into existence a contract between us. Such acceptance shall be a condition precedent to these Terms and shall be and take effect only on the provisions in these Terms.
- 2.5 There shall be no contract in existence prior to the Order Confirmation, and we will notify you if your Purchase Order cannot be accepted along with the reason for this (examples of which include (but shall not be limited to) instances where the price of metal has increased and an amended quotation needs to be issued, or where the Purchase Order does not match the Quotation Response).
- 2.6 Your Purchase Order must be correct as it is strictly the sole basis upon which your order is processed and performed.

3 Pricing and payment

- 3.1 You shall pay the price for the goods along with all other charges (which shall include (but shall not be limited to) delivery charges, taxes, levies, import or export duties and manufacturing costs) as specified in the Order Confirmation and not as expressed in any quotation, estimate or documentation, or given orally.
- 3.2 You must pay all invoices raised by us, within 30 days of date of invoice unless varied in writing by us or varied by alternative payment terms set out on our invoice to you.
- 3.3 You can pay for orders by credit/debit card, bank transfer or cheque.
- 3.4 If payment is delayed, we shall at our exclusive discretion be entitled to:
- 3.4.1 agree an alternative timeframe in which you are required to pay which shall be at our sole and exclusive discretion; and/or
- 3.4.2 make an additional charge which shall not exceed 3% above the Nat West Bank plc base rate on accruing daily; and/or
- 3.4.3 require you to make a payment in advance of any delivery not yet made.
- 3.4.4 If payment is not made in accordance with these Terms or at any time your credit standing has in our opinion been impaired, we may refuse delivery of any goods required under this contract until arrangements as to payment or credit have been established which are satisfactory to us.

4 Delivery of goods to you

- 4.1 We will detail the estimated delivery date on the Order Confirmation. We will endeavour to deliver the goods by or on this date, however this is an estimated date by which we expect to deliver the goods. For the avoidance of doubt, both the estimated delivery date and any other date given under or pursuant to the Terms are no more than an estimate, and our conformity with such date is not, and shall not in any event or circumstance be or become, of the essence of the contract between us.

- 4.2 Where we anticipate that the goods will not be delivered by the estimated delivery date, we will endeavour to keep you updated with a revised estimated delivery date.
- 4.3 We may deliver the goods by instalments, which shall be invoiced and paid for separately. Any delay in delivery or defect in an instalment shall not entitle you to cancel any other instalment.
- 4.4 You shall be deemed to have accepted delivery of the goods immediately upon the entry or inscription of your signature (or anyone so authorised by you) on our standard delivery note, or the delivery paperwork provided by the carrier of the goods, which entry or inscription shall immediately constitute, and be deemed to constitute, conclusive evidence of your satisfaction with and acceptance of the goods.
- 4.5 Once goods have been delivered to you, they will be held at your own risk, and we will not be liable for their loss or destruction.

5 Termination

- 5.1 We reserve the right to terminate the contract forthwith at any time if:
- 5.1.1 you commit a material breach of the Terms.
 - 5.1.2 you fail to make payment when it becomes due.
 - 5.1.3 you commit a material breach, or series of breaches resulting in a material breach, of the Terms and such breach is not remediable or is not remedied within 21 days of written notice to do so.
 - 5.1.4 you suspend or threaten to suspend payment of your debts, or you are unable to pay your debts as they fall due.
 - 5.1.5 you negotiate with your creditors for rescheduling of your debts, or you make a proposal to or compound with your creditors in respect of your debts or make an application to court for protection from your creditors generally.
 - 5.1.6 you pass a resolution for winding-up or for the appointment of an administrator, or a liquidator or administrator is appointed, or a winding-up order is made.
 - 5.1.7 a receiver or administrative receiver may be or is appointed in relation to you or any of your assets.
 - 5.1.8 any creditor of the other attaches, takes possession of, or any distress, execution or similar process is levied or enforced against, all or any part of your assets, and such attachment or process is not discharged within 14 days.
 - 5.1.9 you take or suffer any action similar to any of the above in any jurisdiction.
 - 5.1.10 there is a material change in your management, ownership, or control; or
 - 5.1.11 you suspend trading, cease to carry on business, or threaten to do either.
- 5.2 If we terminate your contract, we will credit to your account any sum deducted by us from you in respect of any goods which have been paid for but not delivered as soon as possible but

in any event within 30 days of your order. We shall be entitled to retain payment already made in respect of goods which have been delivered to you up to and including the date of termination. We will not be obliged to offer any additional compensation for disappointment suffered.

- 5.3 The termination of the contract howsoever arising shall be without prejudice to any other rights or remedies either party may be entitled to hereunder and shall not affect any accrued rights or liabilities of a party and neither shall it operate to affect those provisions of these Terms as are expressed or by implication intended to operate or have effect after termination. You shall indemnify us in respect of all reasonable costs, expenses (including legal expenses) and liabilities we incur as a result of us terminating the contract due to your breach of contract or as a result of your acts or omissions.

6 Acknowledgments and Acceptance

- 6.1 You acknowledge and agree that:
- 6.1.1 you have satisfied yourself as to the condition of the goods before signing our delivery note, having undertaken a normal visual inspection.
- 6.1.2 you will undertake a further inspection of the goods and notify us in writing within three days of the delivery date if the goods are defective, in the case of a defect which is apparent on normal visual inspection.
- 6.1.3 in the case of a latent defect, you shall notify us in writing of such defect within a reasonable time of the latent defect having become apparent.
- 6.1.4 that the sole and exclusive undertaking given by us as to the quality or fitness for any purpose of the goods shall be that set out in the Order Confirmation; and
- 6.1.5 we shall not be liable in respect of the goods failure to comply with the quality and fitness of the goods set out in the Order Confirmation if clause 7.3 applies.

7 Defects and liability

- 7.1 We may, at our exclusive and unqualified discretion, make good either by repair or by the provision of a replacement, any defect which, following proper use of the goods (either in servicing, machining, processing or otherwise), appears in the goods after they have been delivered, provided that:
- 7.1.1 you notify us in writing of the claimed defect(s) in accordance with clause 6.1 above; and
- 7.1.2 you allow us to fully and properly investigate the defect you are reporting by providing us with access to the premises in which the goods are held, sufficient opportunity to test the goods, and any further assistance, information and/or records we reasonably request to investigate the defect; and
- 7.1.3 we are satisfied that the sole cause of the defect is that the goods are faulty (other than a design made, furnished, or specified by you for which we have disclaimed responsibility in the Order Confirmation); and

- 7.1.4 all goods claimed to be defective are returned to us at our expense within 14 days of our request.
- 7.2 Repaired or replacement goods shall be delivered to you at the original place of delivery unless you request otherwise and shall be subject in all other respects (*mutatis mutandis*) to the provisions of the Terms.
- 7.3 We will not be liable for any failure or defect in the goods where:
- 7.3.1 you complain of a failure, defect or other concern with the goods which is caused by your failure to order the correct goods or where we disclaim such a liability in the Order Confirmation (and we will produce and rely on your Purchase Order to demonstrate this); or
- 7.3.2 the failure or defect arises in the normal course of use, or arises out of your wilful damage, negligence, or abnormal conditions; or
- 7.3.3 you unreasonably use the goods after notifying us of the failure or defect; or
- 7.3.4 there is a visible failure or defect in the goods which would have been identified had you properly investigated the goods as set out in clause 6.1, and you do not notify us of such a visible failure or defect.
- 7.3.5 Save as precluded by law, we will not be liable to you for any indirect or consequential loss, damage or expenses (including loss of profits, business or goodwill) howsoever arising out of any problem you notify to us under this condition and we shall have no liability to pay any money to you by way of compensation other than to refund to you the amount paid by you for the goods in question.
- 7.4 We shall not be liable in respect of any claim which may be made against us for infringement of any letters patent or registered design which may arise as a result of us carrying out instructions given by you and you agree to indemnify us and keep us indemnified from and against all or any such claims and against all costs, damages and expenses incurred by or recovered against us in respect of any such claims.
- 7.5 As an alternative to the discretion expressed in clause 7.1, and if you have already paid the price when you notify the claimed defect to us, we may, at our exclusive and unqualified discretion refund the price of the goods to you and thereafter recover possession of those goods from you.

8 Title and risk for businesses

- 8.1 Risk in the goods will pass to you on completion of the delivery.
- 8.2 Title to goods shall not pass to you until the earlier of:
- 8.2.1 we receive payment in full (in cash or cleared funds) for the goods that become due to us from you for sales of goods, in which case title to these goods shall pass at the time of payment; or
- 8.2.2 you resell those goods, in which case title to those goods shall pass to you at the time specified in **Error! Bookmark not defined.**8.4.

- 8.3 Until title to goods has passed to you, you shall:
- 8.3.1 store those goods separately from all other goods held by you so that they remain readily identifiable as our property.
 - 8.3.2 not remove, deface, or obscure any identifying mark or packaging on or relating to those goods.
 - 8.3.3 maintain those goods in satisfactory condition and keep them insured on our behalf for their full price against all risks with an insurer that is reasonably acceptable to us. You shall obtain an endorsement of our interest in the goods on your insurance policy, subject to the insurer being willing to make the endorsement. On request you shall allow us to inspect those goods and the insurance policy; and
 - 8.3.4 give us such information as we may reasonably require from time to time relating to:
 - 8.3.4.1 the goods; and
 - 8.3.4.2 your ongoing financial position.
 - 8.4 Subject to clause 8.5, you may resell or use the goods in the ordinary course of your business (but not otherwise) before we receive payment for the goods. However, if you resell the goods before that time:
 - 8.4.1 you do so as principal and not as our agent; and
 - 8.4.2 title to those goods shall pass from us to you immediately before the time at which resale by you occurs.
 - 8.5 At any time before title to the goods passes to you, we may:
 - 8.5.1 by notice in writing, terminate your right under clause 8.4 to resell the goods or use them in the ordinary course of its business; and
 - 8.5.2 require you to deliver up all the goods in your possession that have not been resold, or irrevocably incorporated into another product and if you fail to do so promptly, enter any premises of yours or of any third party where the relevant goods are stored to recover them.

9 Notices

Unless otherwise expressly stated in these Terms, all notices from you to us must be in writing and sent to our email address sales@dynamicmetalsltd.co.uk or our contact address at 40 Eden Way, Chartwell Business Park, Leighton Buzzard, Bedfordshire LU7 4FY and all notices from us to you will be sent to the contact details you provide us through the order process in clause 2.

10 Events beyond our control

10.1 Neither party shall owe or incur any liability under or in connection with, or be deemed to be in breach of, these Terms by reason of any delays in, revisions to, or failures in performance of these Terms that result from events or circumstances beyond the reasonable control of that party.

10.2 We shall have no liability to you for any failure to deliver goods you have ordered or any delay in doing so or for any damage or defect to goods delivered that is caused by any event or circumstance beyond our reasonable control including, without limitation, strikes, lockouts and other industrial disputes, breakdown of systems or network access, flood, fire, explosion, terrorism, or accident.

11 Severance

11.1 If any provision of these Terms is prohibited by law, or is determined by any court of law or other binding adjudicatory authority or conceded by the parties to be unlawful, void, or unenforceable, the provision:

11.1.1 shall, to the extent required and as far as possible, be severed from these Terms and rendered ineffective without modifying the remaining provisions of these Terms; and

11.1.2 shall not in any way affect any other provisions of these Terms or the validity or enforcement of these Terms generally.

12 Third party rights

Except for our affiliates, directors, employees or representatives, a person who is not a party to these Terms has no right under the United Kingdom Contracts (Rights of Third Parties) Act 1999 to enforce any term of these Terms, but this does not affect any right or remedy of a third party that exists or is available apart from that Act.

13 No agency or partnership

These Terms shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between us, other than, and except as provided for in, the contractual relationship expressly provided for in these Terms.

14 Assignment and other dealings

14.1 We may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under these Terms.

- 14.2 You may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all its rights or obligations under these Terms without our prior written consent.

15 Waiver

No failure or delay by a party to exercise any right or remedy provided under these Terms or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

16 Governing law

The contract between us shall be governed by and interpreted in accordance with English law and the English courts shall have jurisdiction to resolve any disputes between us.

17 Entire agreement and variation

- 17.1.1 These Terms together with the Confirmation of Order set out the whole of our agreement relating to the supply of the goods to you by us and supersedes and replaces any prior written or oral agreements, representations or understandings between them. The parties confirm that they have not entered into these Terms on the basis of any representation that is not expressly incorporated into these Terms. Nothing said by any salesperson on our behalf should be understood as a variation of these Terms or as an authorised representation about the nature or quality of any goods offered for sale by us. Save for fraud or fraudulent misrepresentation, we shall have no liability for any such representation being untrue or misleading.
- 17.1.2 The sale of goods by us to you that is constituted by and recorded in these Terms shall be governed solely, throughout the performance of all current and future orders and for as long as obligations subsist under or in connection with these Terms, by the express provisions of the Terms.
- 17.2 For the avoidance of doubt, and in accordance with this clause 17 generally:
- 17.2.1 the reference to a provision that is not set out in the Terms includes (without limitation or other prejudice to the general meaning of such reference) any provision emanating from standard terms or conditions routinely proffered or employed by you in the course of your business or profession (Your Provisions) that you invoke, proffer, or purport to bring into effect as governing the Terms; and
- 17.2.2 you acknowledge and agree that we shall not be bound by any of Your Provisions.

18 Interpretation

- 18.1 Any reference to working day means all days other than Saturdays, Sundays and public holidays.
- 18.2 Headings in these Terms do not affect the interpretation of these Terms.
- 18.3 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application, or re-enactment, and includes any subordinate legislation for the time being in force made under it.
- 18.4 Words in the singular include the plural and, in the plural, include the singular, and words denoting a gender include all genders, and words importing persons include firms, companies and corporations and vice versa.