

The Customer's attention is drawn in particular to the provisions of clause 9.

1. Interpretation

1.1 Definitions

Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

Conditions: the terms and conditions set out in this document.

Contract: the contract between the Supplier and the Customer for the sale and purchase of the Goods in accordance with these Conditions.

Customer: the person or firm who purchases the Goods.

Force Majeure Event: an event or circumstance beyond a party's reasonable control.

Goods: Tungum tube or any other goods (or any part of them) set out in the Order.

Order: the Customer's order for the Goods, as set out in the Customer's purchase order form.

Specification: any specification for the Goods, including any related plans and drawings, agreed in writing by the Customer and the Supplier.

Supplier: T2 Alloys Limited (registered in England and Wales with company number 11183768) whose registered office is 200a Ashchurch Business Centre, Alexandra Way, Tewkesbury, England GL20 8TD.

1.2 Interpretation

A reference to a statute or statutory provision is a reference to such statute or provision as amended. Any phrase introduced by the terms **including, include, in particular** or similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms. A reference to **writing** or **written** includes emails.

2. Basis of contract

2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.2 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order, along with any applicable Specification, are complete and accurate.

2.3 The Order is only accepted when the Supplier issues a written acknowledgment of the Order, at which point the Contract is formed.

2.4 Any samples, drawings or advertising produced by the Supplier and any descriptions or illustrations contained in the Supplier's catalogues or brochures are produced for the purpose of giving an approximate idea of the Goods and shall not form part of the Contract.

2.5 The Supplier's quotation for the Goods does not constitute an offer. Any quotation is valid for 30 Business Days from the date of issue.

2.6 The Customer may at any time up to 14 days prior to the delivery date amend or cancel an Order by written notice to the Supplier. If the Customer amends or cancels an Order, its liability to the Supplier shall be limited to the payment to the Supplier of all costs reasonably incurred by the Supplier in fulfilling the Order up to the date of deemed receipt of the amendment or cancellation, except that the Customer shall have no liability to the Supplier where the amendment or cancellation results from the Supplier's failure to comply with its obligations under the Contract.

3. Goods

To the extent that the Goods are to be manufactured in accordance with a Specification supplied by the Customer, the Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the Specification. This clause 3 shall survive termination of the Contract.

4. Delivery

4.1 The Supplier shall ensure that:

(a) each delivery of the Goods is accompanied by a delivery note showing the Order date, Customer and Supplier reference numbers, the type and quantity of the Goods (including any code numbers), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding instalments to be delivered; and

(b) if the Supplier requires the Customer to return any packaging materials to the Supplier, that fact is clearly stated on the delivery note. The Customer shall make such packaging materials available for collection at times reasonably requested by the Supplier. Such returns shall be at the Supplier's cost.

4.2 The Goods will be delivered to the location set out in the Order or any other location agreed by the parties (**Delivery Location**) at any time after the Supplier notifies the Customer that the Goods are ready.

4.3 Delivery is completed on the completion of unloading of the Goods at the Delivery Location.

4.4 Quoted delivery dates are approximate only. The time of delivery is not of the essence and the Supplier shall not be liable for any delay in delivery which is caused by a Force Majeure Event or the Customer's failure to provide adequate delivery instructions.

4.5 If the Supplier fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Supplier shall have no liability for any failure to deliver the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions.

4.6 If the Customer fails to accept delivery of the Goods within three Business Days of the Supplier notifying the Customer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or the Supplier's failure to comply with its obligations under the Contract:

(a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day after the day on which the Supplier notified the Customer that the Goods were ready; and

(b) the Supplier shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).

4.7 If ten Business Days after the day on which the Supplier notified the Customer that the Goods were ready for delivery the Customer has not accepted delivery of them, the Supplier may resell or dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.

4.8 The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Any delay in delivery of an instalment shall not entitle the Customer to cancel any other instalment.

4.9 The parties agree that if in respect of an Order the Supplier delivers up to and including 10% more or less than the quantity of the Goods ordered, the Customer will not be entitled to reject the Order, but a pro-rata adjustment shall be made to the Order invoice.

5. Quality

5.1 The Supplier warrants that on delivery, and for a period of 6 months from the date of delivery (**warranty period**), the Goods shall:

(a) conform in all material respects with their description and any applicable Specification;

(b) be free from material defects in design, material and workmanship;

(c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979);

(d) be fit for any purpose held out by the Supplier.

5.2 Subject to clause 5.3, if:

(a) the Customer gives notice in writing to the Supplier during the warranty period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 5.1;

(b) the Supplier is given a reasonable opportunity to examine the Goods; and

(c) the Customer (if requested to do so) returns the Goods to the Supplier's place of business at the Customer's cost,

the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

5.3 The Supplier shall not be liable for the Goods' failure to comply with the warranty set out in clause 5.1 if:

(a) the Customer makes further use of the Goods after giving notice in accordance with clause 5.2;

(b) the defect arises because the Customer failed to follow the Supplier's instructions as to the storage, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;

(c) the defect arises as a result of the Supplier following any drawing, design or Specification supplied by the Customer;

(d) the Customer alters or repairs such Goods without the Supplier's written consent;

(e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or

(f) the Goods differ from their description or the Specification as a result of changes made to ensure compliance with statutory or regulatory requirements.

5.4 Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.

5.5 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

5.6 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

6. Title and risk

6.1 Risk in the Goods shall pass to the Customer on completion of delivery.

6.2 Title to the Goods shall not pass to the Customer until the earlier of:

(a) the Supplier receives payment in full for the Goods and any other goods that the Supplier has supplied to the Customer, in which case title to the Goods shall pass at the time of payment of all such sums; and

(b) the Customer resells the Goods, in which case title to the Goods shall pass to the Customer at the time specified in clause 6.4].

6.3 Until title to the Goods has passed to the Customer, the Customer shall:

(a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;

(b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

(c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;

(d) notify the Supplier immediately if it becomes subject to any of the events listed in clause 8.1; and

(e) give the Supplier such information relating to the Goods as the Supplier may require.

6.4 Subject to clause 6.5, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Supplier receives payment for the Goods. However, if the Customer resells the Goods before that time:

(a) it does so as principal and not as the Supplier's agent; and

(b) title to the Goods shall pass from the Supplier to the Customer immediately before the time at which resale by the Customer occurs.

6.5 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 8.1, then, without limiting any other right or remedy the Supplier may have:

(a) the Customer's right to resell the Goods or use them in the ordinary course of its business ceases immediately; and

(b) the Supplier may at any time:

(i) require the Customer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product; and

(ii) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

7. Price and payment

7.1 The price of the Goods shall be the price set out in the Order, or, if no price is quoted, the price set out in the Supplier's published price list in force at the date of delivery.

7.2 The Supplier may, by giving notice to the Customer at any time up to 10 Business Days before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:

(a) any factor beyond the Supplier's control;

(b) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or

(c) any delay caused by any instructions of the Customer or the Customer's failure to give the Supplier adequate or accurate information or instructions.

7.3 The price of the Goods:

(a) excludes amounts in respect of value added tax (**VAT**), which the Customer shall additionally be liable to pay to the Supplier at the prevailing rate, subject to the receipt of a valid VAT invoice; and

(b) excludes the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer.

7.4 The Supplier may invoice the Customer for the Goods at any time after the completion of delivery.

7.5 The Customer shall pay the invoice in full and in cleared funds on the due date for payment. Payment shall be made to the bank account nominated in writing by the Supplier. Time for payment is of the essence.

7.6 Where sums due under the Contract are not paid by the due date, the Supplier may charge interest on the overdue amount at the rate of 4% per annum above the Bank of England's base rate from time to time. Interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

7.7 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Supplier may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

8. Termination

8.1 The Supplier may terminate this Contract with immediate effect by giving written notice to the Customer if:

(a) the Customer commits a material breach of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of receiving written notice of that breach;

(b) the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

(c) the Customer stops carrying on all or a significant part of its business; or

(d) the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to fulfil its obligations under the Contract are jeopardised.

8.2 Without limiting its other rights or remedies, the Supplier may suspend provision of the Goods under the Contract or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in clause 8.1(a) to clause 8.1(d), or the Supplier reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.

8.3 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.

8.4 On termination of the Contract for any reason the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest.

8.5 Termination of the Contract shall not affect any accrued rights and liabilities of the Supplier at any time up to the date of termination.

8.6 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

9. Limitation of liability

9.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:

(a) death or personal injury caused by negligence;

(b) fraud or fraudulent misrepresentation;

(c) any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.

9.2 Subject to clause 9.1:

(a) the Supplier shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, loss of data, loss of use, loss of production, loss of contract, loss of opportunity, loss of savings or any indirect or consequential loss arising under or in connection with the Contract; and

(b) the Supplier's total liability to the Customer in respect of all other losses shall not exceed 150% of the price of the Goods.

10. Force majeure

Neither party shall be in breach of this Contract nor liable for delay or failure in performing any of its obligations under this Contract where such delay or failure is due to a Force Majeure Event. If the period of delay or non-performance continues for 30 days, the party not affected may terminate this Contract by giving 14 days' written notice to the affected party.

11. Trade Mark

Tungum (**Trade Mark**) is a registered trade mark of the Supplier. The Customer acknowledges and agrees that all rights in the Trade Mark shall remain in the Supplier and that the Customer has and will acquire no right in them.

12. General

12.1 Assignment and other dealings.

(a) The Supplier 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 the Contract.

(b) The Customer may not assign, subcontract or encumber any right or obligation under the Contract without the Supplier's prior written consent.

12.2 Confidentiality.

The Customer shall keep confidential all Confidential Information of the Supplier and shall only use the same as required to perform the Contract. The provisions of this clause shall not apply to any information which was in the public domain at the date of the Contract, any information which comes into the public domain subsequently other than as a consequence of any breach of the Contract, any information which is independently developed by the Customer without using information supplied by the Supplier or any disclosure required by law, a court of competent jurisdiction or any governmental or regulatory authority.

12.3 Entire agreement. This Contract constitutes the entire agreement between the parties and supersedes all previous understandings between them, whether oral or written.

12.4 Variation. No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

12.5 Waiver. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy or

prevent or restrict the further exercise of that or any other right or remedy.

12.6 Severance. If any provision or part-provision of the Contract is found to be invalid or illegal, its remaining provisions will remain in full force and effect.

12.7 Notices.

(a) Any notice or other communication given to a party in connection with the Contract shall be in writing, addressed to that party at its registered office (if a company) or its principal place of business (in any other case) or such other address as that party has specified in writing, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier or email.

(b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 12.7(a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by email, one Business Day after transmission.

(c) The provisions of this clause shall not apply to the service of any proceedings or documents in any legal action.

12.8 Third party rights. No one other than a party to this Contract shall have any right to enforce its terms.

12.9 Governing law and jurisdiction.

(a) The laws of England and Wales apply to the Contract and any dispute or claim arising out of or in connection with it.

(b) The courts of England and Wales have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract.