

# Dunham-Bush Limited

## Standard Terms and Conditions of Sale

### 1. DEFINITIONS

In these Conditions of Sale "the Seller" means Dunham-Bush Limited, "Order Acknowledgement" means the Seller's Order Acknowledgement, "the Buyer" means the person firm or company by whom an order is given to the Seller and "the Goods" means the goods which are the subject of the Order Acknowledgement.

### 2. ORDERS/ACCEPTANCE

- a. All orders received from the Buyer must be in writing and are subject to acceptance by the Seller by its issue of a written Order Acknowledgement.
- b. Catalogues, price lists, advertisements and other published information are only indications of the types of Goods available and shall not form part of the Contract for Supply or any other contract with the Buyer nor be considered a collateral warranty or a representation inducing the same.
- c. Contracts for Supply are not subject to cancellation except upon:
  - i. the written approval of the Seller; and
  - ii. the payment of a fair and equitable charge to the Seller based upon the actual cost and loss of profit incurred by the Seller in respect of the Contract for Supply to the date cancellation is received and approved.

### 3. SPECIFICATIONS

Where the Buyer has requested the Seller to manufacture any Goods to its own design or specification:

- a. the Seller shall not be liable for any defects in the Goods, or any loss or damage arising from the Goods resulting from inaccurate or incomplete information, drawings or instructions supplied by the Buyer; and
- b. the Buyer will indemnify the Seller from and against all actions, claims, liabilities, costs and expenses incurred by the Seller as a result of any such infringement, or any such inaccurate or incomplete information, drawings or instructions as aforesaid.
- c. The Seller shall have the right to make any alteration or improvement in the design of the Goods without notice to the Buyer provided the Goods are not being manufactured to the Buyer's specification.

### 4. PRICES

- a. The Price for the Goods shall be as set out in the Order Acknowledgement, except as otherwise provided for herein.
- b. The Seller reserves the right by written notice given to the Buyer before delivery of the Goods to vary the price of the Goods if:
  - i. after the date of the Order Acknowledgement there is any increase or decrease in the Seller's general price list in respect of the same or similar descriptions of Goods; or
  - ii. any alteration in design of the Goods is made with the agreement or at the request of the Buyer; or
  - iii. there is any suspension of or hindrance to work as a result of the Buyer's instructions or its failure to give instructions; or
  - iv. there is any clerical or stenographic error as to the Price or its calculation in the Order Acknowledgement.

### 5. TAXES

- a. All Customs and Excise duties import and/or export duties and all other taxes, tariffs and surcharges of any nature whatsoever now or hereafter levied or imposed in any country or territory either directly or indirectly in respect of the sale, supply, delivery or use of the Goods shall be borne by the Buyer and except as stated in the Order Acknowledgement are additional to the prices therein stated.

### 6. PAYMENT TERMS

- a. Except as otherwise specified in the Order Acknowledgement or this Condition payment for the Goods shall be due in full in pounds sterling within 30 days of the date when the Seller's invoice is issued.
- b. The Seller's invoice may be issued at any time after the Goods are despatched or collected from the Seller's premises or earlier if the Goods are ready for despatch but are held at the Seller's premises by instruction of the Buyer or for lack of such instruction.
- c. The Seller may require payment for Goods which are to be exported from the United Kingdom, to be made by means of an irrevocable letter of credit confirmed by a bank in the United Kingdom.
- d. In the event of any payments becoming overdue the Seller:
  - i. shall be entitled to cancel any allowance or discount given to the Buyer in respect of the Goods and to charge interest at the rate of 1.5% per month and proportionately for any lesser period calculated from the date when the payment becomes due (whether or not demanded) until the overdue amounts are paid and to be indemnified all its legal and other cost losses and expenses related to any actual or threatened legal proceedings for collection; and
  - ii. reserves the right to suspend further deliveries and/or to cancel allowance of further credit and/or to require cash on delivery and the Seller shall have the same rights if it, at its discretion at any time, considers the financial circumstances of the Buyer have ceased to justify the terms allowed.

### 7. VISIBILITY CLAUSE

This contract is divisible, the work performed in each delivery during the currency of the contract will be invoiced separately. Each invoice for work performed in any delivery shall be payable by the customer in full accordance with the terms of payment herein, without reference to and notwithstanding a defect or default in the work performed or to be performed in any other delivery.

### 8. DELIVERIES

- a. Unless otherwise expressly provided in the Order Acknowledgement, all sales are ex works the Seller's premises at Havant, England and delivery of the Goods to the carrier shall constitute delivery thereof to the Buyer, and thereafter the Goods shall be at the Buyer's risk. Any claim for shortage or damage occurring after such delivery or for transportation overcharges should be directed by the Buyer in writing to the carrier and copied to the Seller within ten days of delivery.
- b. Any period or date for delivery stated in the Contract for Supply or elsewhere is the Seller's best estimate when stated but is not a contractual commitment. Should the Seller's estimate prove inaccurate the Seller shall use its best endeavours to notify the Buyer of the re-scheduled date for delivery at the earliest reasonable opportunity.
- c. The Seller cannot accept any responsibility for any penalties incurred by the Buyer, due to delivery of the Goods being made outside the agreed or specified period.

### 9. RETENTION OF TITLE

No property in or title to the Goods shall pass to the Buyer until their full price has been duly paid in cash to the Seller. Failure to pay the purchase price when due shall, without prejudice to any other remedies the Seller may have, entitle the Seller to repossess the Goods or so much thereof as the Seller may determine from any premises where they may be or to which they may be attached. For the purpose of repossessing the Goods or any part thereof the Buyer shall permit the Seller, its employees or agents to enter upon such premises and the Buyer shall pay to the Seller Vendor the cost of removal and transport of the Goods or any part thereof. Nothing in this Condition shall confer any right on the Buyer to return any of the Goods or to refuse or delay payment therefor.

### 10. WARRANTY

- a. The Seller warrants the Goods against defects in design, materials and workmanship which become apparent within 18 months of the date of shipment from the factory to the Buyer, or 12 months from the date of startup - whichever may occur first ("the Warranty Period").
- b. The Seller's obligation under this warranty is limited to repairing or replacing defective parts at its option supplying on an exchange basis replacements for any defective Goods or part or parts thereof and making good any defect or defects in the Goods which may develop under normal and proper use within the Warranty Period.
- c. In the event of the Buyer becoming aware of a defect in the Goods during the Warranty Period the Buyer shall promptly supply the Seller with written particulars of such defect, use its best endeavours to provide all information and particulars necessary to enable the Seller or its agents to verify the notified particulars and to ascertain the nature and cause of the defect claimed and shall afford the Seller and or its agents full and proper access and facilities therefor and for making good the defect.
- d. Our liability does not include the cost of replacement refrigerant nor any labour charges for replacement of parts, adjustments, repairs, or any other work done outside our factories. Any parts supplied shall be ex works from the factory of origin.
- e. The above warranty shall not apply to any defect in the Goods where such defect is caused in whole or in part by the installation, storage, use, maintenance or repair of the Goods in a manner reasonably considered by the Seller to be improper or by any other act of the Buyer or any third party.
- f. The above warranty provisions do not apply to any Goods where it is impracticable or unsafe for the Seller to comply with the same.
- g. The Seller shall be under no liability whatsoever to repair, replace or make good any loss which results from defects caused by wear and tear, lack of regular maintenance, accident, neglect, misuse, dampness, abnormal temperature or other conditions or circumstances beyond the Seller's control.
- h. Nothing in the above warranty provisions shall impose any liability or obligation upon the Seller if the Seller has not received payment in full for the Goods.

### 11. LIMITATION OF LIABILITY

- a. The Seller does not seek to exclude or restrict any legal liability it may have for death or personal injury resulting from the negligence of the Seller, its employees, agents or sub-contractors.
- b. Subject as aforesaid the Buyer shall be entitled to the benefit of the aforementioned warranty which is given in lieu of and replaces, excludes and extinguishes all and every condition or warranty whatsoever whether expressed or implied by Statute, Common Law, trade usage, custom or otherwise.
- c. Notwithstanding the exclusion of any warranty as to fitness for the purpose contained in these Conditions, as a separate condition the Buyer agrees that in circumstances where the Seller relies on the skill of the Buyer to judge whether the Goods are fit for the purpose for which they are being purchased or provided the Seller shall accept no liability whatsoever with regard to that judgement and accordingly it shall be the responsibility of the Buyer to determine the suitability of the Goods for their intended purpose and their compliance with applicable laws, regulations, codes and standards and the Buyer assumes all risks pertaining thereto.
- d. The Seller shall not be liable in respect of any loss or damage of whatsoever kind or howsoever caused, whether by reason of the negligence of the Seller or otherwise to premises or other physical property. In the event of legal liability being established the Seller shall not be liable to pay damages from the aforesaid loss or damage.
- e. Save as expressly provided in the Contract for Supply the Seller shall in no circumstances be liable for economic or other consequential or indirect loss or damage of the Buyer and in the event of legal liability being established the Seller shall not be liable to pay damages arising from the aforementioned loss.
- f. If, notwithstanding the foregoing the Seller shall in any circumstances whatsoever be held legally liable and obliged to pay damages to the Buyer then the Buyer's sole rights of redress against the Seller shall be limited to a claim or claims for damages the total amount of which shall in no circumstances exceed the amount received by the Seller for the defective Goods or, as the case may be, the part thereof proved to be defective.

### 12. INSURANCE

These Conditions contain exclusions of liability on the part of the Seller. The price for the Goods in the Contract for Supply has been calculated and agreed on the basis that the Seller so excludes its liability and the Seller recommends that the Buyer ensures that such insurance cover as the Buyer may require in relation to the Contract for Supply and matters related thereto is effected such as to include, without prejudice to the generality of the foregoing:

- a. damage to physical property of any kind; and
  - b. economic and other consequential or indirect loss or damage.
- The Buyer therefore acknowledges and accepts that it is reasonable for the Seller to limit its legal liability and its liabilities to pay damages as set out in these Conditions.

### 13. FORCE MAJEURE

The Seller shall not be liable under the Contract for Supply wherever and to the extent that the fulfilment of its obligations is prevented frustrated impeded and/or delayed as a consequence of any "force majeure" and/or any circumstances whatever and howsoever arising beyond its reasonable control. The Seller accordingly reserves the right to allocate as the Seller may think fit its available goods and resources between customers with whom the Seller has contractual obligations in respect thereof and shall not be obliged to purchase goods from third parties nor sub-contract services to make good such shortages.

### 14. HEALTH AND SAFETY

The Buyer agrees to pay due regard to any information or advice relating to the use of the Goods which are furnished to it whether by the Seller or on its behalf and that it will take all necessary steps with a view to ensuring that the Goods will be safe and without risk to health when used.

### 15. ASSIGNMENT

The Buyer shall not assign or otherwise transfer all or any of its rights, interests or obligations under the Contract for Supply without the prior consent of the Seller.

### 16. WAIVER

The rights of the Seller shall not be prejudiced or restricted by any indulgence or forbearance extended to the Buyer and no waiver of any breach shall operate as a waiver of any subsequent breach.

### 17. GOVERNING LAW

The proper law of the Contract for Supply is the law of England and the Contract for Supply shall for all purposes be governed and construed and enforced and performed in accordance with the laws of England and the Seller hereby expressly submits to the jurisdiction of the English Courts.

### 18. HEADINGS

The headings of these Conditions do not form part of the Conditions and shall not affect the interpretation thereof.