



Conditions of Sale of Don-Bur (Bodies & Trailers) Limited

1 Interpretation

1.1 In these Conditions

'BUYER' means the person or firm whose order for the Goods is accepted by the Seller.

'CONDITIONS' means the standard terms and conditions of sale set out in this document, the Acknowledgement of Purchase Order issued by the Seller, the specification issued by the Seller and (unless the context otherwise requires) includes any special terms and conditions or any variation agreed in Writing between the Buyer and the Seller.

'CONTRACT' means the Contract for the purchase and sale of the Goods.

'DELIVERY DATE' means the date for delivery specified in the Acknowledgement of Purchase Order issued by the Seller.

'GOODS' means the Goods (including any instalment of the Goods or any parts for them) which the Seller is to supply in accordance with these Conditions.

'PRICE' means the Price specified by the Seller in the Acknowledgement of Purchase Order.

'SELLER' means Don-Bur (Bodies & Trailers) Limited (a private limited Company registered in England under Company number 1571914) having its registered office at Mossfield Road, Longton, Stoke-on-Trent, Staffordshire ST3 5BW, United Kingdom.

'WRITING' includes facsimile transmission, e-mail and comparable means of communication.

1.2 Any reference in these Conditions to any provision of a statute is to be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

1.3 The headings in these Conditions are for illustrative purposes only and shall not affect their meaning and shall not be used to affect their interpretation.

2 Basis of Sale

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

2.2 All orders for Goods shall be deemed to be an offer by the Buyer to purchase the Goods pursuant to these Conditions.

2.3 No variation to these Conditions shall be effective unless agreed in Writing between the authorised representatives of the Buyer and Seller.

2.4 A quotation by the Seller does not constitute an offer and the Seller may withdraw or revise a quotation at any time prior to the Seller's acceptance of the Buyer's order.

2.5 The Seller's representatives are not authorised to make any representations concerning the Goods unless confirmed by the Seller in Writing. In entering into the Contract, the Buyer acknowledges that it does not rely on any such representations which are not so confirmed.

2.6 The description, illustrations and Prices contained in the Seller's catalogues, price lists and other advertising materials are intended to present a general idea of the Goods described in them and shall not form part of the Contract. Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in Writing by the Seller is relied upon entirely at the Buyer's own risk and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed.

2.7 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller may be corrected without any liability at any time on the part of the Seller.

3 Orders and Specifications

3.1 No order placed by the Buyer (including telephone orders) shall be deemed to be accepted by the Seller unless and until confirmed in Writing on the Acknowledgement of Purchase Order signed by a person authorised by the Seller to accept orders.

3.2 The Buyer shall be responsible for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer, and for giving the Seller any necessary information relating to the Goods within a reasonable time to enable the Seller to perform the Contract in accordance with its terms.

3.3 The quantity, quality and description of and any specification for the Goods shall be those specified in the Seller's Acknowledgement of Purchase Order one copy of which shall be signed and returned by the Buyer.

3.4 If the Goods are to be manufactured or any process is to be applied to the Goods by the Seller in accordance with the Buyer's specification, the Buyer shall indemnify the Seller against all loss, damages, costs and expenses awarded against or incurred by the Seller in connection with or paid or agreed to be paid by the Seller in settlement of any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the Seller's use of the Buyer's specification.

3.5 The Seller reserves the right to make any changes in the specification of the Goods which are necessary to comply with any applicable statutory or EC requirements or, where the Goods are to be supplied to the Seller's specification, which do not materially affect their quality or performance.

3.6 No order, which has been accepted by the Seller may be cancelled by the Buyer without the written agreement of the Seller, and on such terms as reasonably required. The Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs, (including the cost of all labour and materials used), damages, charges and expenses incurred as a result of cancellation.

4 Price of Goods

4.1 The Price of the Goods will be the price set forth in the Seller's purchase order acknowledgment.

4.2 The Seller reserves the right, by giving notice to the Buyer at any time before delivery to increase the Price of Goods to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in Delivery Dates, quantities or specifications for the Goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.

4.3 Except as otherwise stated in Writing by the Seller all Prices given by the Seller are on an ex-works basis from the Seller's premises in the United Kingdom and where the Seller agrees to deliver the Goods otherwise than at the Seller's premises, the Buyer shall be liable to pay the Seller's charges for transport, packaging and insurance.

4.4 The Price is exclusive of any applicable Value Added Tax, which the Buyer shall be additionally liable to pay the Seller.

5 Terms of Payment

5.1 Subject to any special terms agreed in Writing between the Buyer and the Seller, the Seller shall be entitled to invoice the Buyer for the Price of the Goods at any time before, on or after notification by the Seller to the Buyer that the Goods are ready for delivery. If the Buyer wrongfully fails to take delivery of the Goods, the Seller shall be entitled to invoice the Buyer for the Price and for any storage charges incurred by the Seller in storing the Goods from the date of notification that the Goods are ready for delivery.

- 5.2 The Buyer shall pay the Price of the Goods in cleared funds within 5 business days of receiving an invoice from the Seller. Unless otherwise expressly agreed in writing by the Seller, the Buyer shall not be entitled to any extended payment terms. The Seller shall be entitled to recover the Price, notwithstanding that delivery may not have taken place, and title in the Goods has not passed to the Buyer. The time of payment of the Price shall be of the essence of the Contract. Receipts for payment will be issued only upon request.
- 5.3 The Buyer shall be liable for the payment of the Seller's invoice regardless of whether the payment of the Seller's invoice is to be paid directly by the Buyer or by third party. Where the Buyer has entered into an agreement with any third party in relation to the payment of the Price of the Goods, the Buyer shall be liable to the Seller for any failure by such third party to settle the Seller's invoice on the due date.
- 5.4 If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:-
- 5.4.1 cancel the Contract or suspend deliveries to the Buyer;
- 5.4.2 apply any payment made by the Buyer to any of the Goods (or the Goods supplied under any other Contract between the Buyer and the Seller), as the Seller sees fit (even if the Buyer has directed the payment to a specific order); and
- 5.4.3 charge the Buyer interest (both before and after any judgement) on the amount unpaid, at the rate of 5 per cent per annum above the Bank of England's base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).
- 5.5 The Buyer shall pay all amounts due under this Contract in full without any set-off, counterclaim, deduction, or withholding, except as required by law.
- 6 Delivery**
- 6.1 Delivery of the Goods shall be made by the Buyer collecting the Goods at the Seller's premises within a reasonable time after the Seller has notified the Buyer that the Goods are ready for collection or, if the Seller agrees in writing to deliver the Goods to a different location, by the Seller delivering the Goods to that location. The Seller accepts no liability for any loss or damage to the Goods howsoever arising after Delivery.
- 6.2 Any dates quoted for delivery of the Goods are approximate only and the Seller shall not be liable for any delay in delivery of the Goods howsoever caused. Time for delivery shall not be of the essence of the Contract unless previously agreed by the Seller in writing. The Goods may be delivered by the Seller in advance of the quoted Delivery Date upon giving reasonable notice to the Buyer.
- 6.3 If the Goods are to be delivered in instalments, each instalment is a separate Contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.
- 6.4 If the Seller fails to deliver the Goods for any reason other than any cause beyond the Seller's reasonable control or the Buyer's fault, and the Seller is accordingly liable to the Buyer, the Seller's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar Goods to replace those not delivered over the Price of the Goods.
- 6.5 If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then without prejudice to any other right or remedy available to the Seller, the Seller may:
- 6.5.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or
- 6.5.2 sell the Goods at the best Price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the Price under the Contract or charge the Buyer for any shortfall below the Price under the Contract.
- 6.6 The Buyer will be deemed to have accepted the Goods 24 hours after the Seller notifies the Buyer that the Goods are ready for collection.
- 7 Risk and Property**
- 7.1 Risk of damage to or loss of the Goods shall pass to the Buyer:
- 7.1.1 in the case of Goods to be delivered at the Seller's premises, at the time when the Seller notifies the Buyer that the Goods are available for collection; or
- 7.1.2 in the case of Goods to be delivered otherwise than at the Seller's premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Seller has tendered delivery of the Goods.
- 7.2 Notwithstanding delivery and the passing of risk in the Goods, or any provision of these Conditions, title in the Goods shall not pass to the Buyer (or at the instruction of the Buyer, to any third party where the Buyer has entered into a separate agreement with such third party for the financing of the Goods), until the Seller or where relevant any of the Seller's associated subsidiary or holding companies, has received in cash or cleared funds payment in full of all monies due by the Buyer (including any interest payable under condition 5.4.3), regardless of whether the Price of the Goods is to be paid by the Buyer, any of the Buyer's associated subsidiary or holding companies or any third party, under any Contract between them. In the event that the Buyer finances the purchase of the Goods through a third party, the Buyer shall remain liable for payment of the Goods to the Seller.
- 7.3 Until such time as title in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee and shall keep the Goods maintained in satisfactory condition and properly stored and protected and separate from those of the Buyer and third parties and identified as the Seller's property.
- 7.4 The Buyer shall insure and maintain insurance on the Goods for the full Price against all risks to the Seller's reasonable satisfaction until title in the Goods passes to the Buyer. The Buyer shall produce a copy of the insurance policy to the Seller upon request. If the Buyer fails to do so, all sums owed by the Buyer to the Seller shall immediately become due and payable, without prejudice to the Seller's other rights and remedies.
- 7.5 Notwithstanding that the Goods remain the property of the Seller, the Buyer may sell or use the Goods in the ordinary course of the Buyer's business at full market value for the account of the Seller. Any such sale or dealing shall be a sale or use of the Seller's property by the Buyer on the Buyer's own behalf and the Buyer shall deal as principal when making such sales or dealings. Until title in the Goods passes from the Seller the entire proceeds of sale or otherwise of the Goods whether tangible or intangible, including insurance proceeds shall be held in trust for the Seller and shall be kept separate from any monies or property of the Buyer and third parties and shall not be mixed with other money or paid into any overdrawn bank account and shall be at all material times identified as the Seller's money and in the case of tangible proceeds, property stored, protected and insured as aforesaid.
- 7.6 Until such time as title in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold) the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.
- 7.7 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller, but if the Buyer does so all monies owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.
- 7.8 The Seller shall be entitled to recover the Price (plus VAT) notwithstanding that title in the Goods has not passed from the Seller.



8 Warranties and Liability

- 8.1 Subject to the Conditions set out below, the Seller warrants that:
- 8.1.1 All Goods manufactured and sold by the Seller as new will correspond with their specification at the Delivery Date and will be free from defects in material and workmanship in respect of the chassis and Superstructure for a period of 5 years or 500,000 kilometers (whichever is the shorter) from the Delivery Date.
- 8.1.2 All repair work carried out by the Seller will be free from defects for 1 year from completion of the said works.
- 8.2 This warranty does not apply to:
- 8.2.1 Goods not of the Seller's own manufacture.
- 8.2.2 Parts or equipment made or supplied by other manufacturers and identified as such in the specification (in respect of which other Goods and Goods not of the Seller's own manufacture the Seller's sole responsibility is to pass on to the Buyer the benefit of the manufacturer's guarantee (if any) in relation to such parts and equipment to the extent that it is able to do so, but without itself being in any way liable in respect of such parts or equipment for the period and to the extent set out in the specification).
- 8.3 The Seller's liability under this warranty is subject to the following conditions:
- 8.3.1 The Buyer must notify the Seller of any claim under the warranty within 7 days of the Delivery Date (or, where the defect was not apparent on reasonable inspection, within a reasonable time after discovery of the defect).
- 8.3.2 The Buyer must return the Goods to the Seller's premises at the Buyer's expense.
- 8.3.3 The Buyer must not have made any unauthorized repairs to the Goods.
- 8.4 The Seller's sole liability under these Conditions is to repair or replace any defective Goods.
- 8.5 Subject to clause 8.6, the Seller is not liable for any of the following types of losses:
- (a) loss of profits.
 - (b) loss of sales or business.
 - (c) loss of agreements or contracts.
 - (d) loss of anticipated savings.
 - (e) Loss of use or corruption of software, data or information.
 - (f) Loss of or damage to goodwill.
 - (g) Indirect or consequential loss.
- 8.6 Nothing in these Conditions limits any liability of the Seller which cannot legally be limited.
- 8.7 Nothing in this warranty affects the Buyer's statutory rights under the Consumer Rights Act 2015, if applicable.

9 Force Majeure

- 9.1 The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Seller's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control:
- 9.1.1 Natural disasters, such as hurricanes, floods, earthquakes, and fires;
- 9.1.2 Pandemics and other public health emergencies;
- 9.1.3 Acts of war, terrorism, or civil unrest;
- 9.1.4 Labor unrest;
- 9.1.5 Government actions, such as embargoes, sanctions, and import/export restrictions;
- 9.1.6 Strikes and other industrial actions;
- 9.1.7 Power outages and other utility disruptions; or
- 9.1.8 Any other event that is beyond the reasonable control of the affected party and prevents it from performing its obligations under this Contract.

10 Indemnity

- 10.1 If any claim is made against the Buyer that the Goods infringe or that their use or resale infringes the patent, copyright design, trade mark or other industrial or intellectual property rights of any other person then unless the claim arises from the use of any drawing, design or specification supplied by the Buyer, the Seller shall indemnify the Buyer against all loss, damages, costs and expenses awarded against or incurred by the Buyer in connection with the claim, or paid or agreed to be paid by the Buyer in settlement of the claim, provided that:
- 10.1.1 the Seller is given full control of any proceedings or negotiations in connection with any such claim,
- 10.1.2 the Buyer shall give the Seller all reasonable assistance for the purposes of any such proceedings or negotiations;
- 10.1.3 except pursuant to a final award, the Buyer shall not pay or accept any such claim, or compromise any such proceedings without the consent of the Seller (which shall not be unreasonably withheld);
- 10.1.4 the Buyer shall do nothing which would or might vitiate any policy of insurance or insurance cover which the Buyer may have in relation to such infringement, and this indemnity shall not apply to the extent that the Buyer recovers any sums under any such policy or cover (which the Buyer shall use its best endeavours to do);
- 10.1.5 the Seller shall be entitled to the benefit of, and the Buyer shall accordingly account to the Seller for, all damages and costs (if any) awarded in favour of the Buyer which are payable by, or agreed with the consent of the Buyer (which consent shall not be unreasonable withheld) to be paid by, any other party in respect of such claim; and
- 10.1.6 without prejudice to any duty of the Buyer at common law, the Seller shall be entitled to require the Buyer to take such steps as the Seller may reasonably require to mitigate or reduce any such loss, damage, costs or expenses for which the Seller is liable to indemnify the Buyer under this Clause.

11 Seller's right of Termination

- 11.1 This Clause applies if:-
- 11.1.1 the Buyer fails to observe or perform any of its obligations under the Contract and fails to remedy any such breach (if capable of remedy) within 10 working days of the Seller's notice to do so;
- 11.1.2 the Buyer shall refuse to take delivery or collect any of the Goods in accordance with the terms of the Contract;
- 11.1.3 an encumbrancer takes possession of or a trustee or administrative or other receiver or similar officer is appointed in respect of all or any material part of the business or assets of the Buyer, or if any distress, execution, or other similar process is levied upon or enforced against any such assets and is not discharged within 7 working days of being levied or enforced;
- 11.1.4 the Buyer is subject to a winding-up order, administration order, or other equivalent order made by a court of competent jurisdiction (including a court outside England and Wales), or passes a resolution for voluntary winding-up (other than for the purpose of reconstruction or amalgamation), or gives notice of intention to appoint an administrator, or is otherwise deemed to be insolvent under applicable law.
- 11.1.5 the Buyer convenes a meeting of its creditors or prepares or makes any arrangement or composition with, or any assignment for the benefit of its creditors or a petition is presented or other steps are taken for making an administration order against or for winding up of the Buyer



(other than for the purposes of and following by a reconstruction previously approved in Writing by the Seller), unless during or following such reconstruction the Buyer becomes or is declared to be insolvent;

- 11.1.6 Buyer ceases, or gives notice of its intention to cease or otherwise indicates an intention to cease, to carry on business; or
- 11.1.7 the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.
- 11.2 If this Clause applies then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without incurring any liability to the Buyer, and if the Goods have been delivered but not paid for the Price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.
- 11.3 The Buyer shall notify the Seller as soon as reasonably practicable of the happening of any of the events referred to in Clauses 11.1.2 to 11.1.6 inclusive.
- 11.4 Termination of the Contract, howsoever arising, shall not affect any of the parties' rights, remedies, obligations and liabilities that have accrued as at termination.

12 Export Terms

- 12.1 In this clause, "Incoterms" means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made. Unless the context requires otherwise, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in this clause, but if there is any conflict between the provisions of Incoterms and these Conditions, the latter shall prevail.
- 12.2 For the export of Goods from the United Kingdom, the provisions of this clause shall apply (subject to any special written agreement between the Buyer and the Seller) notwithstanding any other provision of these Conditions.
- 12.3 The Buyer shall be responsible for obtaining all necessary import permits and licenses and complying with all applicable import laws and regulations, including the payment of any applicable taxes and duties.
- 12.4 Unless otherwise agreed in writing, the Goods shall be delivered in accordance with the Incoterm FCA at the air or sea port of shipment. The Seller is not responsible for arranging for shipment or insurance.
- 12.5 The Buyer is responsible for having the Goods tested and inspected at the Seller's premises before shipment. The Seller is not liable for any defects in the Goods that would have been apparent on inspection.
- 12.6 Payment of all amounts due to the Seller must be made by irrevocable letter of credit opened by the Buyer in favour of the Seller and confirmed by a bank acceptable to the Seller for an amount equal to the full purchase price of the Goods.
- 12.7 The Buyer is prohibited from reselling the Goods in any country identified by the Seller to the Buyer in writing before the Buyer places their order, or from selling the Goods to any person who they know or have reason to believe intends to resell the Goods in a restricted country.

13 Intellectual Property

- 13.1 All specifications, patterns, drawings, photographs and information provided by the Seller to the Buyer in writing or orally shall remain the exclusive property of the Seller and shall not be disclosed by the Buyer to any third party without the Seller's consent in Writing.
- 13.2 No right or licence is granted under this Contract to the Buyer under any patent, trade mark, copyright, registered design or other intellectual property right of the Seller.

14 General

- 14.1 All notices and other communications under this Contract must be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving notice and shall be deemed to have been received:
 - (a) if delivered by hand, at the time the notice is left at the proper address;
 - (b) 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; or
 - (c) if sent by email, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume.

In this clause 14, Business Hours shall mean the period from 9.00 am to 5.00 pm on any day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
- 14.2 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- 14.3 No waiver of any right or remedy under this Contract shall be effective unless in writing and signed by both parties.
- 14.4 The failure to exercise or delay in exercising any right or remedy under the Contract shall not constitute a waiver of the right or remedy or a waiver of any other rights or remedies as no single or partial exercise of any right or remedy under the Contract shall prevent further exercise of the right or remedy or the exercise of any other right or remedy.
- 14.5 If any provision or part-provision of these Conditions is or becomes invalid, illegal or unenforceable by a court of competent jurisdiction, it shall be deemed deleted and the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected.
- 14.6 This agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.
- 14.7 The Contract shall be governed by and construed in accordance with the laws of England, and the parties irrevocably submit to the exclusive jurisdiction of the English courts.