



Conditions of Business (Update: These are now void and superceded by 2nd Sept 2019)

Contracts and Quotations

- 1.1 These conditions shall be incorporated in all contracts for the supply of goods or services by Don-Bur (Bodies & Trailers) Limited (hereinafter referred to as "the Company") to the exclusion of any terms or conditions referred to by the customer but no contract shall come into existence until the Company has given its written acknowledgement of the customer's order. Acceptance of the delivery of the goods or the supply of the service by or on behalf of the customer shall in any event be conclusive evidence of the customer's acceptance of these conditions.
- 1.2 Each contract supersedes all previous oral or written communications between the Company and the customer not expressly referred to in the Company's order acknowledgement and no amendment of any contract shall bind the Company unless confirmed by it in writing.

Prices and Payment

- 2.1 The Company's prices exclude VAT and other taxes and unless otherwise stated:
 - 2.1.1 are ex works exclusive of transport and insurance but inclusive of such as the Company considers appropriate for the particular goods:
and
 - 2.1.2 may be varied at the Company's discretion for any cost incurred by the Company as a result of alterations in design specifications, quantities or production, delivery or performance schedules or suspension of work requested by the customer, and any inaccuracy of or delay in the supply of any instructions, data or materials supplied or to be supplied by or on behalf of the customer and any fluctuation in the cost of materials, equipment, labour, transport or utilities (including as a result of currency changes, increased administrative costs, increased customs, duties, taxes or other levies) arising from whatever cause after the date of the Company's quotation.
- 2.2 All amounts due to the Company unless otherwise stated shall be payable in pounds sterling without any deductions whatsoever. Interest shall be payable on any overdue amount from the date on which payment was due to that on which it is made (whether before or after judgement) on a daily basis at the rate of three (3) per cent over the NatWest Plc base rate from time to time in force. All bank charges associated with payment are for the customer's account.

Delivery

- 3.1 Goods are delivered and risk in them shall pass to the customer when they are made available at the Company's premises or other delivery point stated in the Company's order acknowledgement. In the latter case, the customer shall be responsible for all off-loading operations and the Company reserves the right to deliver the goods at the nearest point of suitable access.
- 3.2 In the case of goods for destinations outside the United Kingdom mainland any trade terms referred to in the Company's order acknowledgement shall to the extent consistent with these conditions be as defined in the edition of "Incoterms" then current.
- 3.3 Times for delivery or performance are as advised in the order acknowledgement subject to the supply of all instructions, drawings, facilities and free issued items required from the customer to enable the Company to proceed with the contract immediately and without interruption or hindrance. The Company shall endeavour to meet such delivery or performance times but shall not be liable for any loss, damage, or expense of whatever kind arising from any delay or failure from whatever cause nor shall such failure or delay entitle the customer to refuse to accept any delivery or performance or repudiate the contract.
- 3.4 If the customer fails to take delivery of any goods on the due date or provide adequate delivery instructions the Company may store the good at the risk of the customer who shall pay all storage, transportation, handling or other charges incurred by the Company as a result of such failure and the goods shall be deemed to have been delivered on that date by the Company which shall, in particular, be entitled to payment as though delivery had taken place.
- 3.5 The Company may determine the form of transport of any goods the price of which includes transport and charge extra for any special arrangements requested by the customer.
- 3.6 The Company may deliver goods or perform services by instalments and each instalment shall be deemed the subject of a separate contract. No failure by the Company in any one or more instalments shall entitle the customer to repudiate any contract for goods or services previously supplied or to refuse to accept any goods or services remaining to be supplied.

Title

- 4.1 Until the Company has received full and unconditional payment for the goods in cash or cleared funds, title in them shall remain with the Company and not pass to the customer who shall nevertheless, subject to the conditions stated below, be entitled to use or as a principal re-sell them in the ordinary course of business.
- 4.2 Until title passes:
 - 4.2.1 the customer shall ensure that the goods are at all times clearly identified as the property of the Company who shall, without prejudice to any other remedy, be entitled to receive payment for and maintain an action for the price of the goods although title in them has not passed to the customer;
 - 4.2.2 the Company shall be entitled at any time on demand to repossess, dismantle (without being liable for any damage thereby occasioned) and use or sell all or any of the goods and thereby terminate (without any liability to the customer) the customer's right to use or sell them and for that purpose or for the purpose of determining what, if any, goods are held by the customer and inspecting them to enter any premises where the goods are or are reasonably thought to be stored.
- 4.3 Until the Company has been paid in full for the goods any equipment in which the goods have been installed shall be or become the property of the Company and any proceeds of sale or insurance from the goods or such equipment (or the amount due to the Company, if less) shall be paid to a separate bank account and together with the customer's rights against its purchasers held on trust for the Company.
- 4.4 Any goods in the customer's possession which are the same as those not paid for under any contract shall be presumed to have been supplied under such contract and to be unpaid unless the customer proves otherwise to the Company's satisfaction but so that this presumption shall not extend to a greater quantity of goods than those not paid for under the contract.
- 4.5 The Company transfers to the customer only such title and rights of use as the Company has in any goods and in the case of material purchased from a third party shall transfer only such title and rights as that party had and has transferred to the Company.

Losses in Transit etc

- 5.1 The Company will at its discretion within a reasonable period replace at the original point of delivery, repair or allow the customer credit for the invoice value (or proportionate part thereof) of any goods which the customer proves were at the time of delivery missing, lost, damaged or not in accordance with their contract description, or, where any loss or damage may have occurred after delivery in the course of any transportation arranged by the Company on behalf of the customer, assist in making any claim against the carrier or insurer and account to the customer for the proceeds of any such claim, less any reasonable and proper expenses.
- 5.2 Claims by the customer will be considered only if:



- 5.2.1 the customer has inspected the goods promptly and given the Company written notice (otherwise than on the carrier's delivery note) of any alleged shortage, damage or other discrepancy within seven (7) days following the date of receipt;
- 5.2.2 in the case of any alleged loss of a complete consignment, the customer has given the Company written notice thereof within ten (10) days (or twenty eight (28) days or other period stated in the Company's order acknowledgement for goods intended for destinations outside the United Kingdom mainland) from the date of the Company's invoice;
- 5.2.3 the customer's notice of claim contains sufficient information to substantiate a claim against any carrier or insurer by the Company on its own account or on behalf of the customer;
- 5.2.4 the customer has afforded the Company reasonable opportunity and facilities for the investigation of the claim and the carrying out of any repairs or remedial work and complied with any request by the Company for the turn of any goods for examination, the cost of carriage and insurance to be borne by the customer but reimbursed if the claim is accepted, in which event any replaced goods shall belong to the Company;
- 5.2.5 the customer has not permitted any person other than the Company to effect any modification or repair to the goods.

Test, Installation and Taking over etc.

- 6.1 Goods are inspected and tested before despatch. In the event that it is agreed that the customer's representatives may attend such tests and the Company is notified in writing of this intention with the order and if such representatives fail to attend after the Company has given notice of its readiness for testing the Company shall be entitled to proceed in the customer's absence and the results of such tests shall be conclusive as to the performance achieved. Where any tests are to be conducted at a location other than the Company's works and the customer fails after the Company has given notice of its readiness for testing to carry out the tests they shall be deemed to have been successfully performed.
- 6.2 Where the Company supplies any services including installation or testing or supervising the installation or testing of any goods:
 - 6.2.1 the customer shall at its expense provide such facilities and assistance, including but not limited to the proper receipt, storage and protection of the goods as and when delivered any equipment provided by the Company, suitable access to and possession of any working areas, adequate lifting facilities, skilled and unskilled labour, lighting and heating, services (including electricity, water and compressed air), fuel, components and materials and equipment for the adequate testing of the goods as the Company reasonably requires for the services and ensure that such facilities and assistance are safe and comply with all legislation, bye-laws, standards, codes of practice and other requirements from time to time applicable. Where requested by the Company, the customer will also make available free of charge such office space, telephones, canteen, sanitary and washing facilities as the Company reasonably requires. The customer will permit the Company on its request to repeat or correct any work and the Company shall, if the customer proves that any services have not been carried out with reasonable skill and care, make good within a reasonable period or, at its discretion, give credit for the invoice (or proportionate part thereof) of the defective service.
 - 6.2.2 The goods shall be deemed to have been taken over by the customer when they have passed the tests, if any, specified in the quotation or been put into commercial use, if earlier, or in any event at the expiration of two (2) months after the Company has given written notice that its services have been completed unless in the meantime the customer proves that the goods do not comply with their specification. The time of taking over shall not be delayed on account of additions, minor omissions or defects which do not materially affect the commercial use of the goods.

Guarantee

7. The Company's liability for any alleged defects in workmanship, materials or design (to the extent the Company is responsible for design) in any goods shall be up to a period of six (6) months from the date on which goods are available for delivery or stated in the Company's published guarantee applicable at the date of the Company's order acknowledgement.

Extent of Liability

- 8.1 These conditions and the Company's order acknowledgement together with any applicable guarantee published by the Company state the total liability of the Company in connection with any goods or services supplied by it whether arising in contract, tort (including negligence) or otherwise howsoever. In particular the Company shall in no circumstances have any liability for the quality of any goods or services, except as stated in these conditions, the order acknowledgement or any such guarantee, or their fitness for any purpose or for any indirect or consequential loss suffered by the customer under or in connection with any contract, including but not limited to wasted time or expenditure, loss of profits, production, business revenue or goodwill or any claim against the customer by any person.
- 8.2 The Company shall be discharged of all liability to which these conditions apply unless proceedings are begun within two (2) years after the customer became aware (or should reasonably have become aware) of the facts giving rise to such liability.
- 8.3 The Company's liability in connection with any goods or service shall in no circumstances exceed the price (or proportionate part thereof) payable for them.
- 8.4 Where the Company is liable under these conditions in respect of some only of any goods or services forming the subject matter of any contract the contract shall remain in full force and effect in respect of the remaining goods or services and the customer shall not reject or refuse to pay for them.

Technical and other matters

- 9.1 The Company shall have no liability under these conditions in respect of any advice, opinion or information furnished by the Company, its employees or agents unless given in writing in pursuance of a written term of the contract.
- 9.2 The Company reserves the right at any time without notice to change the weights and dimensions of any specification of any goods except to the extent such particulars have been agreed in writing by the Company.
- 9.3 Any descriptions or particulars contained in the Company's leaflets price lists or other material are intended merely to present a general idea of the goods described in them and shall not form part of any contract.
- 9.4 The Company shall have no liability for:
 - 9.4.1 any inaccuracy in or delay in the supply of any drawings, information, instructions, materials or other items supplied or to be supplied by the customer, or
 - 9.4.2 any loss of or damage to any property of the customer whilst on the premises or under the control of the Company.

Infringements

- 10.1 The customer shall indemnify and hold harmless the Company against any infringement or alleged infringement of the rights of any third party claimed under or in relation to any patent, registered design, trade mark, copyright or breach of confidence which arises for whatever reason from the use of the goods by any person other than the customer or, if the goods are used by the customer, from the Company's use of any design or instruction provided by the customer, and against all losses, damages, liabilities, costs and expenses associated with any such claim.
- 10.2 The Company shall be entitled at its option and expense at any time by giving written notice to the customer to assume the conduct of any proceedings or negotiations in relation to any claim that any goods designed and supplied by the Company infringe the rights of any third party or replace or modify such goods so as to eliminate such infringement or alleged infringement and in no circumstances shall the Company have any liability for any losses arising from the non use of any such goods.

Force Majeure

- 11.1 The Company shall not be liable for any delay or other failure to perform the whole of any part of the contract resulting from any cause whatsoever beyond the Company's control existing at the date of the order acknowledgement or arising thereafter including but not limited to fire, explosion, breakdown or failure of plant or machinery, lack or failure of transportation facilities, supply of labour, materials, power supplies, strike, lockout or labour dispute (whether or not at the Company's works), illness, epidemic,



flood, drought, war, civil commotion, or restriction of any authority or governmental agency and any time for delivery or performance agreed by the Company shall be extended for the period during which such circumstances prevail.

General

- 12.1 If the customer fails to make any payment when and as due or otherwise defaults in any of its obligations under any contract or other agreement with the Company, becomes insolvent, commits any act of bankruptcy, has a receiver or administrator appointed for all or any part of its business, enters into liquidation, whether compulsory or voluntary, compounds with its creditors or suffers any similar action in consequence of debt or the Company bona fide believes that any of such events may occur, the Company shall, without prejudice to any other remedy, be entitled at Its discretion, by giving the customer written notice at any time, to forthwith suspend its performance of or terminate such contract.
- 12.2 All Items including tools, patterns, materials, drawings, designs or other data (whether or not patented or patentable) prepared by the Company for any contract and all rights (including copyright and design rights) therein shall be and remain the Company's property and the customer shall not copy or reproduce or allow others to copy or reproduce such items or any goods or parts thereof supplied by the Company (Without the express permission of the Company).
- 12.3 The customer shall treat each contract and all information which acquires thereunder as confidential and shall not make any unauthorised use or disclosure thereof except to the extent the same is or becomes part of the public domain otherwise than in breach hereof.
- 12.4 The Company may sub-contract all or any of its obligations to persons whose skills complement those of the Company.
- 12.5 The Company shall have a lien on any undelivered goods in the Company's possession for all sums due at any time from the customer on any account and shall be entitled to use, sell or dispose of the same as agent for and at the expense of the customer and apply the proceeds in and towards the payment of such sums on twenty-eight (28) days written notice to the customer.

Law, Jurisdiction and Construction

- 13.1 The contract shall be governed by English law and the customer consents to the exclusive jurisdiction of the English courts in all matters connected with the contract except to the extent the Company invokes the jurisdiction of the courts of any other country.
- 13.2 The headings of conditions are for convenience of reference only and shall not affect their interpretation.
- 13.3 Any of the conditions which conflicts with any material law, regulation or decision shall be curtailed and limited only to the extent necessary to bring it within the legal requirements and shall otherwise continue in full force and effect.

Notices

- 14.1 Any notice to be given in writing under the contract may be sent by facsimile or forwarded by first class prepaid letter post to the receiving party at its business address as last notified in writing to the other party and shall be deemed to have been given on the date of the facsimile or on the day (or seven (7) days in the case of customers outside the United Kingdom) following the date of posting.

Supplementary

- 15.1 Where the Company provides services at locations other than the Company's works the customer shall, unless otherwise stated in the order acknowledgement indemnify and hold harmless the Company, its agents and employees against all loss, damage, liability (whether in respect of property damage, personal injury, death or otherwise) or expense whatever (including legal costs) resulting from or relating to any claim or course of action arising out of or in connection with any installation, commissioning, service work, labour, goods or facilities supplied by or on behalf of the customer or the Company under the contract. The customer shall maintain, with an insurance company of recognised standing, insurance (in which, on its request, the Company is named as co-insured) in respect of all liability assumed by the customer under this condition and will, on request, provide the Company with evidence as to the existence and sufficiency of such insurance
- 15.2 Where the Company supplies Service Exchange components under the Company's prevailing Service Exchange Scheme:
 - 15.2.1 the customer shall at Its expense return the component to be replaced complete and to the same or equal specification as that of the reconditioned unit being supplied by the Company. The replaced component and any additional parts attached thereto shall become the sole property of the Company. Failure to return to the Company's Works the replaced component within thirty (30) days of despatch of the Service Exchange component will incur a levy of two per cent (2%) of the Contract price for each overdue week or part thereof;
 - 15.2.2 alterations that have been made or parts added to the replaced component subsequent to their previous despatch by the Company will not be incorporated in the Service Exchange component unless they specifically form part of the Service Exchange contract;
 - 15.2.3 the Company reserves the right at its sole option to levy additional charges at prevailing rates for any components not returned with the replaced unit and which are included in the Service Exchange component;
 - 15.2.4 the Company shall upon receipt inspect the replaced unit and may at its sole option levy additional charges at prevailing rates for any major items that are damaged beyond re-use or require major rectification work and which have not been taken into account in the calculation of the Contract price. Should any major items require replacement the Company shall notify the customer in writing and hold such Items available for inspection for fourteen (14) days of the date of notice after which they may be disposed of without further advice.