

HVAC/R INTERNATIONAL, INC./DUNHAM BUSH - TERMS OF SALE

1. **GENERAL:** No contract is made with the seller until there has been an acceptance in writing by the Seller for an order placed by the Buyer with a written and signed purchase order. The terms and conditions herein contained shall apply to the contract and no terms or conditions by neither the Buyer nor any other variation shall have effect unless agrees to in writing by the seller.
2. **ACCEPTANCE AND PRICES:** This proposal is subject to acceptance within thirty days from date, and the prices are subject to change without notice Prior to acceptance from those effective on the date or order receipt to those effective on date of shipment unless prices are stated to be firm on the face of this proposal and the conditions of the firm price proposal for release for immediate production and shipment are met. Any delay in shipment caused by Buyer's actions will subject prices to increase equal to the percentage increase in list process during the period of delay. In no event will prices be decreased. Acceptance of orders for HVAC/R shall be made solely at its headquarters.
3. **PERFORMANCE:** HVAC/R (hereinafter referred to as "Company"), shall be obligated to furnish only the goods described in the Company submittal data (if such data is issued in connection with this order) and as described in written quotation from seller and accepted purchase order from buyer. The duty to perform under any order on the part of the Company and the price thereof is subject to the approval of its Credit Department, and is also contingent upon strikes, accidents, fires, the inability to procure materials from the usual sources of supply, the requirements of the United States Government (through the use of priorities or preference or in any other manner) that the Company diverts either the material or the finished product to the direct or indirect benefit of the government, or upon any like or unlike cause beyond the control of the Company. Upon disapproval of the credit department or upon the occurrence of any such event as aforesaid, the Company may delay performance or, at its option renegotiate prices or terms and conditions of sale with the Buyer, if the Company elects to renegotiate and the Company and the Buyer are unable to agree on revised prices or terms, the order shall be cancelled without any liability.
4. **PRICE AND DELIVERY:** The prices on the order shall remain fixed unless otherwise agreed in writing by the parties and are exclusive of VAT or other taxes which are payable in addition by the Buyer and are to be paid in full without deductions of taxes, charges or duties imposed. Up to the time of formal order acknowledgement, all prices are subject to change without notice. Acknowledged sales price(s) of Company equipment are subject to adjustment to reflect increases in Seller's costs in effect at the time of shipment. If actual shipment goes beyond one year from date of order acceptance, sales price(s) are subject to renegotiation. Additionally, the right is reserved to correct any stenographic or clerical errors, and we assume no responsibility beyond that usual in our course of business, except as defined in detail. The goods covered by the order will be invoiced with prices shown on the order. All contracts are accepted and delivered inclusive of standard packing offered by the manufacturer. The goods shall be collected by the Buyer's freight forwarder at the Buyers cost. All orders must be in writing and are not binding until accepted by the Seller's office. Orders are accepted subject to strikes, accident, and other causes beyond our control. We will not be liable for any delay in delivery or for any damages suffered by the Buyer for reason of such delay.
5. **DUTIES AND LIABILITIES:** All duties, transmission taxes at importation or other taxes of any kind whatsoever relating to the sale contemplated hereby shall be for the Buyer's account.
6. **WARRANTY AND LIABILITY:** The Company warrants for a period of 12 months from initial start up or 18 months from date of shipment, whichever is less, that the Company products covered by this order (1) are free from defects in material and manufacture and (2) have the capacities and ratings set forth in the Company's catalogs and bulletins; provided, that no warranty is made against corrosion, erosion, or deterioration. The Company shall not be obligated to pay for the cost of lost refrigerant. No liability whatever shall attach to the Company until said products have been paid for. **THIS AGREEMENT TO REPAIR OR REPLACE DEFECTIVE PARTS IS EXPRESSLY IN LIEU OF ALL OTHER EXPENSES OR IMPLIED WARRANTIES OF ANY KIND. SELLER HEREBY DISCLAIMS AND EXCLUDES THE IMPLIED WARRANTY OF MERCHANTABILITY AND FURTHER DISCLAIMS AND EXCLUDES ANY IMPLIED WARRANTY OR FITNESS. THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THE DESCRIPTION ON THE FACE OF SELLER'S SALES ORDER ACKNOWLEDGEMENT.** We neither assume nor authorize any person to assume for us any liability or obligation in connection with the sale of our apparatus, except said repair or replacement of the defective part as set forth above. Our liability does not include the cost of replacement refrigerant nor any labor charges for replacement of parts, adjustments, repairs, or any other work done outside our factories and our liability does not include and consequential or resulting damage to persons, property, equipment, goods, merchandise, profits, good will or reputation arising out of any defect in our failure of our apparatus. Our obligation to repair or replace shall not apply to any apparatus which shall have been repaired or altered outside of our factory in any way, or which has been subject to negligence, to misuse, or to pressures in excess of stated limits. On parts not of our manufacture, such as motors, controls, etc. we extend only the same warranties given to the Seller. Our agreement hereunder runs only to the immediate purchasers and does not extend, expressly or by implication, to any other person. Nothing in the above warranty provisions, however, shall impose any liability or obligation of any type, nature or description upon Company if Company has not received payment in full for the apparatus in question. **The equipment must be commissioned by an approved service company and all compressorized equipment must have a preventative maintenance program in effect with regular operating logs on hand for manufacturer to inspect in the event of a warranty claim. If the equipment is not commissioned by an approved service company and no preventative maintenance program is in force the warranty will be automatically denied. Additional extended compressor, parts, and labor warranties are available and the same conditions apply**
7. **LIABILITY DISCLAIMER:** IN NO EVENT SHALL HVAC/R BE LIABLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES RESULTING FROM THE USE, MISUSE, OR INABILITY TO USE THE PRODUCT. The exclusion applies regardless of whether such damages are sought based on breach of warranty, breach of contract, negligence, strict liability in tort, or any other legal theory. Should HVAC/R nevertheless be found liable for any damages, they shall be limited to the purchase price of the equipment.
8. **SHIPMENT DATES:** Shipment dates noted on proposal form are estimates only. Shipment shall be FAS vessel, port of export unless different shipment terms are expressly set forth on the front side of the Company proposal. Shipment dates are based on the date the purchase order is received, agreed payment term is made and the date the certified drawings are returned at which time the equipment is released into production. **IN NO EVENT SHALL HVAC/R BE LIABLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES RESULTED FROM SHIPPING DELAYS**
9. **TITLE PASSAGE:** Any terms such as "FAS", "F.O.B.", "C.I.F.", or "C&P" used in any purchase order, invoice, or other document related to any sale of good by HVAC/R which are sourced from the U.S. refer only to price of goods and not to the place where or time when title to the goods and not to the place where or time when title to the goods passed. On all transaction involving international water or air shipment, HVAC/R will retain title to and the risk of loss of the products until the same first enter international waters upon leaving U.S. territorial water. If transported by air, title to the products and risk of loss shall remain with HVAC/R until the products first inter international air space upon leaving air space. If terms of sale are inland delivery for initial destination for way freight, risk of loss shall pass "F.O.B." if a shipment is to an international destination, risk of loss transfers at the "frontier".
10. **CANCELLATION:** If, following acceptance of this proposal by the Buyer, all or any portion of this order is canceled by the Buyer without default on the part of the Company or without the Company's written consent, the Buyer shall be liable to the Company for cancellation charges including but not limited to, the Company's incurred costs and such profits as would have been realized by the Company from the transaction had the agreement not been breached by the Buyer. **NO PART OF THE DOWN PAYMENT WILL BE RETURNED AFTER THE ORDER HAS BEEN ENTERED INTO PRODUCTION.**
11. **PAYMENT:** Payment terms for goods shipped hereunder will be as shown on the face hereof unless otherwise expressly agreed to in writing by the Company, the Company reserves the right to add to any account outstanding for more than 30 days a service charge of 1-1/2% of the principal amount due at the end of each month, or the maximum allowable legal interest rate, if lesser amount. All compressorized products payment terms are net 30 from ship date unless the commissioning is before the net 30 days expires at which full payment has to be received before commissioning.
12. **ENTIRETY OF AGREEMENT:** This document, together with any, other documents furnished by the Company shall set forth the entire agreement between the parties and may not be changed in any way except by written instrument signed by an officer of the Company.
13. **CHOICE OF LAW:** This agreement shall be governed and construed according to the laws of the state of Florida. Jurisdiction for all conflicts to be in the State of Florida.
14. **TAXES:** In case of the imposition of any additional duty, tax, or other governmental charge upon raw materials entering into production of the goods represented by the invoice and order acknowledgement, or upon or measured by the production, sale or shipment of said goods by Federal, State, or Municipal authorities, which would be applicable to this sale, then the contract price may be increased by the amount of such additional cost or expense to the Seller, which is caused thereby. Unless specifically exempted, all sales use and any other Federal, State, Municipal or Governmental tax will be invoiced to the purchaser as a separate item in addition to the price of the equipment and are to be paid by the purchaser.
15. **SPECIFICATIONS:** The Seller reserves the right to change specifications as conditions warrant.
16. **SHIPPING:** All goods are shipped by Buyer's risk. If material is received in damaged condition, Buyer should contact transportation agent and immediately file claim. Where prices for freight are included, the Seller determines the routing and if special routing is requested, a charge will be made for the difference between such routing costs and normal minimum freight charges to same point. We will endeavor to ship by promised delivery date, but failure to do so for any cause whatever will not give Buyer right to cancel or hold Seller responsible for damages resulting from failure to deliver within the time stated.
17. **SHORTAGES:** No claims for shortages will be considered unless same are made in writing to the Seller within 10 days of receipt shipment.
18. **RETURNS:** Permission to return material plus shipping instructions and Returned Goods Tags must be secured from the factory offices of the Seller before returning any material. All returns must be unused, in new condition, and of standard manufacture. They are subject to a handling charge as stated by us. All authorized return shipments must be made as directed by us and with transportation charges prepaid to point of origin of improperly tagged or not prepaid, are subject to refusal and immediate return to shipper. All equipment and parts are subject to a 30% re-stock fee, except when the shipper sends the wrong part to Buyer. Return parts are only accepted up to 30 days after invoice date.
19. **SOLE TERMS:** Failure of the Seller to object to provisions contained in customer's purchase orders or other communications shall not be deemed a waiver of the terms or conditions hereof nor acceptance of such provision. The printed terms hereon combined with the other writings entered into between the parties, are the entire contract and all of the terms thereof. No oral statements, warranties, representations, stipulations or terms have any binding effect or be any part of the contact whatsoever. Failure of the Buyer to object in writing within five (5) days of receipt thereof to Terms of Sale contained in the Seller's acceptance and/or acknowledgment, or other communications, shall be deemed an acceptance of such Terms of Sale by Buyer.
20. **PATENT INDEMNITY:** The Company shall protect and indemnify the Buyer from and against all claims, damages, judgments and loss arising from infringement or alleged infringement of any United States patent by any of the articles or material delivered hereunder, provided that in the event of suit or threat of suit for patent infringement, the Company shall promptly be notified and given full opportunity to negotiate a settlement. The Company does not warrant against infringement by reason of the Buyer's design of the articles or the use thereof in combination with other materials or in the operation of any process. In the event of litigation, the Buyer agrees reasonably to cooperate with the Company. All parties concerned shall be entitled, in connection with any proceeding under the provisions of this article, to be represented by counsel at their own expense.
21. **CANCELLATION:** Orders maybe canceled only with written consent of the Dunham-Bush and the following cancellation charges payable by the Buyer shall apply:
 - a) 10% of the sale price or US \$200, whichever is the greater, if cancellation is made within 14 days from after acceptance of order,
 - b) 30% of the sale price if sheet metal are fabricated and/or any component parts is purchased by Dunham-Bush,
 - c) 50% of the sale price if Products have been completed for standard products, and
 - d) 100% of the sale price if Products have been completed for custom Products. In the event of any delay delivery as informed by Dunham-Bush within 14 days of acceptance of order, it is agreed that at the option of the Buyer the order may be cancelled at no charge.