

**STANDARD TERMS AND CONDITIONS FOR THE SALE OF GOODS  
OF THE  
LOW & BONAR GROUP**

**SUMMARY:** we provide this short summary of these terms and conditions to aid your understanding.

- You need to read these conditions in conjunction with our quotation or order confirmation, where certain key terms are set.
- These conditions apply to your contract to the exclusion of any other. Your standard terms of purchase are excluded.
- **Our liability to you is limited in certain respects. Please see clauses 4 and 9 for further details.**
- The goods we supply to you will conform to our specification. The period during which you may make claims in terms of the warranty is set out in these conditions. If goods are defective, your principal right will be to a refund or replacement. See clause 5.
- You will not own the goods until you have paid for them in full. See clause 6.
- Payment terms are as set out in clause 7 below or, if different, as specified in an Acceptance. Interest will be payable if you do not pay on time.
- Certain key terms used in the conditions are defined in clause 1.

## 1. Definitions and Interpretation

1.1. In these Conditions, the following terms shall, unless context indicates otherwise, have the following meanings:

- 1.1.1. **“Acceptance”** means the written acceptance by Low & Bonar of an Order submitted to it by the Customer;
- 1.1.2. **“Conditions”** mean the standard terms and conditions for the sale of goods set out in this document, as amended from time to time;
- 1.1.3. **“Contract”** means the contract which is governed by these Conditions between Low & Bonar and the Customer for the sale and purchase of Goods which shall only become binding upon the issuance by Low & Bonar of an Acceptance in response to an Order and which shall incorporate these Conditions, the Acceptance, the Specifications and, if applicable, the Warranty Document;
- 1.1.4. **“Customer”** means the person or entity who agrees to purchase Goods from Low & Bonar in terms of a Contract;
- 1.1.5. **“Force Majeure Event”** means an event or circumstance beyond a party's reasonable control, including but not limited to war, epidemic, rebellion, fire, flood, social conflicts, strikes or other labor disputes (whether or not relating to either party's workforce) unavailability or shortage of stock or raw materials, machine breakdown, unavailability of transport, electrical, information technology, internet or other telecommunication disturbances, decisions or interventions of governments (including a rejection or loss of permits) and acts or omissions by third parties;
- 1.1.6. **“Goods”** mean the Low & Bonar products (or any part of them) listed in the Acceptance and sold to the Customer subject to these Conditions;
- 1.1.7. **“Intellectual Property Rights”** mean any intellectual and industrial property rights including, but not limited to, copyright, moral rights and neighbouring rights, all rights in relation to: inventions (including patent rights and utility models), trademarks, trade names, service marks, logo marks, trade dress other trade names, confidential information (including trade secrets and know how), drawings, prototypes, algorithms, software and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic field, afforded by law anywhere in the world whether registered or unregistered or capable of registration and all applications therefore;
- 1.1.8. **“Low & Bonar”** means the member of the Low & Bonar Group issuing the Acceptance;
- 1.1.9. **“Low & Bonar Group”** means Low & Bonar PLC (registered number: SC008439) and its subsidiary companies and subsidiary undertakings from time to time;
- 1.1.10. **“Order”** means a purchase order submitted to Low & Bonar by the Customer in any manner, whether orally or in writing in respect of Goods that the Customer wishes to purchase from Low & Bonar and which is capable of being accepted by Low & Bonar by issuing an Acceptance;
- 1.1.11. **“Specifications”** mean the written specifications issued by Low & Bonar in respect of the relevant Goods detailing their characteristics and performance and marked or identified as specifications. The Specifications may include data sheets, product application sheets, declarations of performance and Warranty Documents, as applicable;
- 1.1.12. **“Warranty Document”** means a document agreed and signed by Low & Bonar in relation to Goods and identified as a product warranty or warranty contract providing details in respect of the scope and duration of the warranty provided by Low & Bonar in respect of such Goods;
- 1.1.13. **“Warranty Period”** means (i) the warranty period specified in the Warranty Document, if applicable; or (ii) if no warranty period is specified in a Warranty Document, a period of 12 (twelve) months from the date of delivery of the Goods; or (iii) if a different minimum period is required in terms of mandatory applicable law that cannot be deviated from in respect of the relevant Good(s), such mandatory minimum period. No statement as to the predicted or expected durability of Goods made in a declaration of performance or data sheet shall be construed as a warranty period.

1.2. In these Conditions:

- 1.2.1. a reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- 1.2.2. any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- 1.2.3. a reference to writing or written includes faxes, emails and other electronic forms of correspondence.

## 2. Basis of Contract

- 2.1. The submission of an Order by the Customer constitutes an offer by the Customer to purchase Goods in accordance with these Conditions, which offer may be accepted or rejected by Low & Bonar in its discretion. Low & Bonar shall only be bound and a Contract for the sale of Goods between Low & Bonar and the Customer shall only be concluded once Low & Bonar issues an Acceptance in relation to an Order placed by the Customer.
- 2.2. Notwithstanding any language to the contrary in the Customer's standard terms and conditions of purchase, in any Order, any correspondence or any other form of acknowledgment, the Customer shall be bound by these Conditions which will govern each Contract and any other terms and conditions that the Customer seeks to impose or incorporate (including any purchase conditions or other general conditions of business of the Customer), or which are implied by trade, custom, practice or course of dealing, are hereby expressly rejected and excluded. The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.
- 2.3. In the context of ongoing trade relations between Low & Bonar and the Customer, these Conditions shall govern future purchase orders or sales transactions, even without further reference to these Conditions.
- 2.4. Unless clearly identified as Specifications in accordance with these Conditions, any samples, drawings, descriptive matter or advertising produced by Low & Bonar and any descriptions or illustrations contained in Low & Bonar's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods referred to in them and their possible uses and performance and shall not form part of the Contract nor be legally binding on Low & Bonar.
- 2.5. Low & Bonar shall not be bound by any quotations it provides or price lists that it may publish from time to time, any of which shall constitute invitations to the Customer to make an offer to Low & Bonar to purchase Goods in the form of an Order.

## 3. Goods

- 3.1. The quantity, part number(s), price(s), description and, if applicable, the Specifications and any Warranty Document(s) in respect of the Goods shall be as set out or as referred to in the Acceptance.
- 3.2. Low & Bonar reserves the right to amend the Specifications at any time. If such amendments will materially change the Specification of the Goods which are the subject of a Contract, Low & Bonar shall notify the Customer who may, prior to the delivery of the Goods, cancel the Contract in respect of the relevant Goods by written notice to Low & Bonar.

## 4. Delivery

- 4.1. Low & Bonar shall use commercially reasonable endeavours to ensure that:
- 4.1.1. each delivery of the Goods is accompanied by a delivery note that shows the date of the Order and all Low & Bonar reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any); and if Low & Bonar requires the Customer to return any packaging materials to Low & Bonar, this fact shall be confirmed in writing by Low & Bonar to the Customer. The Customer shall make any such packaging materials available for collection at such times as Low & Bonar shall reasonably request. Returns of packaging materials shall be at Low & Bonar's expense unless otherwise agreed for any Order.

- 4.2. Unless agreed otherwise in writing by Low & Bonar or specified differently in an Acceptance:
- 4.2.1. any Goods shall be delivered Ex Works (Incoterms 2010) at Low & Bonar's premises stated in the Acceptance; and
- 4.2.2. any dates or times indicated in a Contract or in an Acceptance for the delivery of Goods are approximate only and may not be made of the essence by notice. Low & Bonar will use commercially reasonable efforts to achieve delivery within a reasonable time and will keep the Customer informed of any material variation from agreed delivery dates or times. If no delivery dates are specified, Low & Bonar shall deliver the Goods within a reasonable time.
- 4.3. Notwithstanding anything to the contrary contained in these Conditions and/or any Contract, any liability that Low & Bonar may incur arising from or relating to late and/or failed delivery of any nature shall in all cases be limited to an amount equal to 5% (five percent) of the price of the Goods concerned.
- 4.4. Low & Bonar shall not be liable for any delay or failure to deliver any Goods if such delay or failure was caused by (i) a Force Majeure Event, or (ii) directly or indirectly by any act or omission of the Customer or any person for whose acts or omissions the Customer is responsible in terms of the applicable law, or (iii) the carrier, haulage or shipping company transporting or shipping the Goods.
- 4.5. Unless caused by a Force Majeure Event or a material breach of Contract by Low & Bonar, if the Customer fails to collect the Goods from Low & Bonar's premises within 3 (three) days of being notified that the Goods are ready for collection for Ex Works Contracts or, where a different Incoterm or delivery method is agreed, the Customer fails to accept delivery from the relevant carrier, as the case may be:
- 4.5.1. the Goods shall be deemed to be delivered and risk of loss or damage to the Goods shall pass to the Customer upon the expiry of the aforementioned 3 (three) day period for Ex Works Contracts or, where a different Incoterm or delivery method is agreed, when the relevant carrier attempts to deliver the Goods in accordance with such Incoterm or agreed delivery method; and
- 4.5.2. Low & Bonar may store the Goods until actual delivery takes place at the sole cost and risk of the Customer and charge the Customer for all related costs and expenses (including storage, handling and insurance).
- 4.6. If the Customer's failure to collect the Goods for Ex Works Contracts or, where a different Incoterm or delivery method is agreed, the Customer's failure to accept delivery from the relevant carrier persist for a period 14 (fourteen) days, Low & Bonar shall be entitled to resell or otherwise dispose of all or part of the Goods and, after deducting commercially reasonable storage, handling, insurance 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.
- 4.7. If Low & Bonar delivers up to and including 5% below or above the quantity of Goods ordered in terms of any Contract, the Customer may not reject any such delivery of Goods. If an over or under delivery occurs within the aforementioned threshold, the Customer shall notify Low & Bonar of such under or over delivery in writing specifying the relevant amounts of Goods delivered and, in case of an over delivery, indicate whether the Customer intends to keep and pay for the Goods delivered in excess of the amount agreed in the relevant Contract or whether the Customer wishes to return such excess Goods to Low & Bonar. In cases of under delivery where the Customer prepaid for the relevant Goods, Low & Bonar shall issue a refund to the Customer (with such refund being for the difference between the amount prepaid by the Customer and the invoice value of the Goods actually delivered). In cases of over delivery where the Customer elects to return the excess Goods to Low & Bonar, the Customer shall ensure that the Goods remain new, unused, packaged in the same manner as they were when delivered to the Customer and shall be stored in an appropriate place and in appropriate environmental conditions so as to ensure that there is no deterioration in the quality or anything which may hamper the resale of the Goods until such time as Low & Bonar or its nominated carrier collects such Goods from the Customer. Upon receipt and after inspection of the returned Goods, Low & Bonar will issue a credit note for the excess Goods at the price invoiced for the relevant delivery of Goods.
- 4.8. Without prejudice to clause 4.7, Low & Bonar may deliver the Goods in instalments, which shall be invoiced and paid for separately. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 5. Quality**
- 5.1. Low & Bonar warrants that, on delivery, the Goods shall:
- 5.1.1. conform with the Specifications and any related Warranty Document; and
- 5.1.2. be free from significant defects in material and workmanship which impairs the functioning of the relevant Goods.
- 5.2. The warranties above do not extend to any matter: (a) which was specifically drawn to the Customer's attention before the Contract was concluded; or (b) where the Customer examined the Goods before the Contract was concluded and such examination should have revealed such matter; or (c) where a sample was provided to the Customer, where such matter would have been apparent from a reasonable examination of the sample; or (d) where conformity with the Specifications was stated to be subject to terms of use or the manner of installation and such terms or the required manner of installation were not met or complied with by the Customer.
- 5.3. The Customer shall inspect the Goods as soon as practicable after delivery and in any event by no later than 7 (seven) days after the Customer takes physical possession of the Goods.
- 5.4. The Customer shall notify Low & Bonar promptly and in any event by no later than 5 (five) days after the earlier of the date that the Customer completed its inspection in terms of clause 5.3 or the expiry of the 7 (seven) day period specified therein of any defects or non-conformities in the Goods that the Customer discovered in the Goods, with such notice clearly describing the nature and extent of any such defects or non-conformities.
- 5.5. Subject to the remaining provisions of this clause 5, if:
- 5.5.1. the Customer has complied with the provisions of clause 5.3 and notifies Low & Bonar in writing either (i) within the period specified in Clause 5.3 of alleged defects or non-conformities discovered during its inspection or (ii) within 10 (ten) days of the date that any other defect or non-conformity is discovered or ought to have been discovered by the Customer during the Warranty Period that applies to the relevant Products; and
- 5.5.2. Low & Bonar is given a commercially reasonable opportunity of examining the relevant Goods; and
- 5.5.3. the Customer (if asked to do so by Low & Bonar) returns the relevant Goods to Low & Bonar's place of business at Low & Bonar's cost; and
- 5.5.4. the notice contemplated in clause 5.5.1 is given within the Warranty Period,
- 5.5.5. Low & Bonar shall, at its option and discretion and in relation to any Goods (or parts thereof) for which Low & Bonar accepts that there is a defect, non-conformity or non-compliance with the warranties set out herein, repair or replace the relevant Goods (with similar Low & Bonar Goods) at Low & Bonar's cost or refund any portion of the price of such Goods paid in advance by the Customer in full, in all cases subject to the provisions of clause 9.
- 5.6. Low & Bonar shall not be liable for any defect, non-conformity or non-compliance with any warranty set out herein in any of the following events:
- 5.6.1. the Customer fails to inspect the Goods or fails to notify Low & Bonar of any defects or non-conformities that the Customer discovered or ought to have discovered pursuant to the provisions of clauses 5.3 and/or 5.5;
- 5.6.2. the Customer installs, processes or makes any further use of such Goods after giving notice in accordance with clause 5.4;
- 5.6.3. the defect arises because the Customer failed to follow Low & Bonar's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or, if there are none, good trade practice regarding the same;
- 5.6.4. the defect or non-conformity arises as a result of Low & Bonar following any drawing, design or specifications supplied by the Customer;
- 5.6.5. the Customer alters or repairs any Goods without the written consent of Low & Bonar;
- 5.6.6. the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
- 5.6.7. the Goods differ from their description and/or the Specifications as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 5.7. Except as provided in this clause 5 and subject to the provisions of clause 9, Low & Bonar shall have no liability to the Customer and the Customer shall have no remedy against Low & Bonar in respect of any defects or non-conformities in the Goods, the Specification and any and all written materials supplied in connection therewith (including any packaging) or any failure to comply with the warranty set out herein.
- 5.8. Except for the express warranties set out herein, Low & Bonar makes no other representations or warranties, express or implied, statutory or otherwise, regarding the Goods, any Specifications and any and all written materials supplied in connection therewith (including any packaging) their fitness for any purpose, their merchantability, their quality, their non-infringement or otherwise.
- 5.9. The warranty set out herein shall apply to any repaired or replacement Goods supplied by Low & Bonar for the remainder of the Warranty Period that applied to the Goods originally delivered.
- 6. Title and Risk**
- 6.1. The risk of loss or damage to the Goods shall pass to the Customer on delivery in accordance with clause 4.
- 6.2. Title to the Goods shall be retained by Low & Bonar until the earlier of:
- 6.2.1. receipt by Low & Bonar of payment in full (in cash or cleared funds) for the Goods, including any charges or interest, if applicable; and
- 6.2.2. the resale of the Goods to a third party in the Customer's ordinary course of business, 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:
- 6.3.1. store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as Low & Bonar's property;
- 6.3.2. not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- 6.3.3. maintain the Goods in satisfactory condition and generally in accordance with the Specifications and any other guidelines published by Low & Bonar from time to time and keep them insured against all risks for their full price from the date of delivery;
- 6.3.4. notify Low & Bonar immediately if it becomes subject to any of the events listed in clause 8.1; and

- 6.3.5. give Low & Bonar such information relating to the Goods as Low & Bonar may require from time to time.
- 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 Low & Bonar receives payment for the Goods. However, if the Customer resells the Goods before that time:
- 6.4.1. it does so as principal and not as Low & Bonar's agent;
- 6.4.2. title to the Goods shall pass from Low & Bonar to the Customer immediately before the time at which resale by the Customer occurs;
- 6.4.3. the Customer shall hold the proceeds of any resale on trust for Low & Bonar; and
- 6.4.4. the Customer hereby assigns to Low & Bonar any and all claims it may have against any third parties for payment in respect of any Goods resold by the Customer to such third parties prior to Low & Bonar receiving payment for such Goods from the Customer in full and the Customer hereby agrees to enforce such claims at Low & Bonar's request.
- 6.5. If the Customer becomes subject to any of the events listed in clause 8.1 before title to the Goods passes to the Customer, then, without limiting any other right or remedy Low & Bonar may have:
- 6.5.1. the Customer's right to resell the Goods or use them in the ordinary course of its business ceases immediately; and
- 6.5.2. Low & Bonar may at any time:
- 6.5.2.1. require the Customer to deliver up all Goods in its possession that have not been resold, or irreversibly incorporated into another product; and
- 6.5.2.2. 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, with the cost of such recovery being for the account of the Customer.
- 6.6. As collateral security for the payment of the purchase price of the Goods and their subsequent resale pursuant to clause 6.2.2, Customer hereby grants to Low & Bonar a lien on and security interest in and to all of the right, title and interest of Customer in, to and under the Goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest, such security interest to be discharge upon payment of the purchase price of the goods in full.
- 6.7. To the extent that the security rights granted to Low & Bonar in terms of this clause 6 are invalid in any jurisdiction where the Goods to which Low & Bonar seeks to retain title are located, any other form of security which is recognised in such jurisdiction and which gives Low & Bonar equivalent security rights over such Goods shall be deemed to have been agreed upon between the parties. The Customer shall be bound to perform all acts and take all steps necessary for the creation and upholding of such security rights for Low & Bonar's benefit.
- ## 7. Price and Payment
- 7.1. The price of the Goods shall be as set out in the Acceptance.
- 7.2. The price of the Goods:
- 7.2.1. excludes amounts in respect of duties, value added tax ("VAT") or any other applicable tax, which the Customer shall additionally be liable to pay to Low & Bonar at the prevailing rate, subject to the receipt of a valid VAT invoice; and
- 7.2.2. unless otherwise agreed between the parties and reflected as such in the Acceptance, excludes the costs and charges of insurance and transport of the Goods, which shall be invoiced to the Customer in addition to the price of the Goods.
- 7.3. Low & Bonar may invoice the Customer for the Goods on or at any time after the Goods are despatched to the Customer or as otherwise agreed in the Contract.
- 7.4. Unless otherwise agreed in relation to a Contract, the Customer shall pay the invoice in full and in cleared funds within 14 (fourteen) days of the date of the invoice. Payment shall be made to the bank account nominated in writing by Low & Bonar. Time of payment is of the essence.
- 7.5. If the Customer fails to make any payment due to Low & Bonar under a Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 8% (eight percent) above the European Central Bank's reference rate per annum or the highest rate permissible under applicable law. Such 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.
- 7.6. The Customer shall pay all amounts due under a Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). Low & Bonar 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 Low & Bonar to the Customer.
- ## 8. Termination
- 8.1. Without limiting any other rights or remedies that Low & Bonar may have in terms of these Conditions, the Contract or in terms of applicable law, Low & Bonar may terminate a Contract with immediate effect by giving written notice to the Customer if:
- 8.1.1. the Customer commits a material breach of the Contract and (if such a breach is capable of being remedied) fails to remedy that breach within 10 (ten) days of being notified in writing to do so;
- 8.1.2. 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;
- 8.1.3. the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
- 8.1.4. the Customer's financial position deteriorates to such an extent that in Low & Bonar's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 8.2. Without limiting its other rights or remedies, Low & Bonar may suspend the performance of any of its obligations under a Contract or any other contract between the Customer and Low & Bonar if the Customer becomes subject to any of the events listed in clause 8.1, or Low & Bonar 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 a Contract on the due date for payment.
- 8.3. Without limiting its other rights or remedies, Low & Bonar may terminate a Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under any Contract on the due date for payment and remains in default not less than 14 (fourteen) days after being notified in writing to make such payment.
- 8.4. On termination of a Contract for any reason, the Customer shall immediately pay to Low & Bonar all of Low & Bonar's outstanding unpaid invoices and any interest or other charges that may have accrued in respect thereof.
- 8.5. Termination of a Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of that Contract that existed at or before the date of termination.
- 8.6. Any provision of a 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 Low & Bonar's liability for:
- 9.1.1. death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- 9.1.2. fraud or fraudulent misrepresentation;
- 9.1.3. liability in accordance with any applicable product liability laws which cannot be excluded by law; or
- 9.1.4. any matter in respect of which it would be unlawful for Low & Bonar to exclude or restrict liability.
- 9.2. Subject to clause 9.1:
- 9.2.1. **LOW & BONAR SHALL UNDER NO CIRCUMSTANCES WHATSOEVER BE LIABLE TO THE CUSTOMER, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF STATUTORY DUTY, OR OTHERWISE, FOR ANY (A) LOSS OF REVENUE OR PROFIT OR LOSS OF DATA OR DIMINUTION OF VALUE, (B) LOSS OF SAVINGS, (C) LOSS OF OPPORTUNITY, (D) LOSS OF USE, (E) LOSS OF PRODUCTION, (F) RECALL COSTS, (G) LOSS OF CONTRACT, (H) PENALTIES, LIQUIDATED DAMAGES OR CLAIMS MADE BY ANY THIRD PARTIES AGAINST THE CUSTOMER, OR (I) ANY INDIRECT OR CONSEQUENTIAL LOSS ARISING FROM OR RELATING TO THESE CONDITIONS OR IN CONNECTION WITH ANY CONTRACT;** and
- 9.2.2. Low & Bonar's total liability to the Customer in respect of all other losses arising from or relating to these Conditions or in connection with any Contract (including any payable pursuant to Clause 4, which remain subject to the limitations set out therein), whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the purchase price of the Goods which caused or gave rise to the relevant liability.
- 9.2.3. The remedies of the Customer under these Conditions are exclusive and are its sole remedies for any failure of Low & Bonar to comply with its obligations in terms of these Conditions and/or any Contract.
- ## 10. Force Majeure
- Neither party shall be in breach of a Contract nor be liable for delay in performing, or failure to perform, any of its obligations (except for any payment obligation) under a Contract if such delay or failure results from a Force Majeure Event. If the period of delay or non-performance continues for 3 (three) months, the party not affected by the Force Majeure Event may terminate that Contract with immediate effect by giving written notice to the affected party.
- ## 11. Intellectual Property Rights
- 11.1. Low & Bonar is and shall remain the owner of all Intellectual Property Rights in any Goods, Specifications and any and all written materials supplied in connection therewith (including any packaging) and shall have full title to such rights.
- 11.2. The Customer shall not do or authorise any third person to do any act which would or might damage or be inconsistent with Low & Bonar's Intellectual Property Rights in relation to any Goods, Specifications and any and all written materials supplied in connection therewith (including any packaging) or to the goodwill associated therewith and, in particular, will not do or authorise the alteration, obliteration, covering up or incorporation of other marks (in whole or in part) on to any Goods. The Customer shall not use or authorise any third person to use the Low & Bonar Group's Intellectual Property Rights in relation to any Goods, Specifications and any

and all written materials supplied in connection therewith (including any packaging) on any stationery, advertising, promotion or selling material other than as authorised by Low & Bonar in writing from time to time.

- 11.3. To the extent that any Goods are to be manufactured in accordance with specifications or any technical data supplied by the Customer (or material information and/or requirements contained or referred to in such specifications or technical data), the Customer shall indemnify and keep indemnified Low & Bonar 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 Low & Bonar in connection with any claim made against Low & Bonar for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with Low & Bonar's use of the specifications and/or technical data supplied by the Customer (or the material information and/or requirements supplied in connection therewith by the Customer). This clause 11.3 shall survive termination of the Contract.
- 11.4. Low & Bonar makes no representation or warranty as to the validity or enforceability of the Intellectual Property Rights related to the Goods, Specifications and any and all written materials supplied in connection therewith (including any packaging), nor as to whether they infringe any intellectual property rights of third parties.
- 11.5. Products manufactured by a third party ("**Third Party Product**") may constitute, contain, be contained in, incorporated into, attached to or packaged together with, the Goods. Third Party Products are not covered by the warranty in clause 5. For the avoidance of doubt, **SELLER MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY THIRD PARTY PRODUCT, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (c) WARRANTY OF TITLE; OR (d) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.**

## 12. General

### 12.1. Assignment and other dealings

- 12.1.1. Low & Bonar 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 a Contract.
- 12.1.2. The Customer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under a Contract without the prior written consent of Low & Bonar.

### 12.2. Entire agreement

- 12.2.1. A Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 12.2.2. Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in a Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

### 12.3. Variation

No variation of a Contract shall be binding unless it is in writing and accepted by the parties (or their authorised representatives).

### 12.4. Waiver

- 12.4.1. A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not:
- 12.4.1.1. waive that or any other right or remedy; nor
- 12.4.1.2. prevent or restrict the further exercise of that or any other right or remedy.

### 12.5. Severance

If any provision or part-provision of a Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

### 12.6. Notices

- 12.6.1. Any notice or other communication given to a party under or in connection with a Contract shall be in writing, addressed to that party at its principal place of business or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, or fax or email.
- 12.6.2. A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 12.6.1; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second 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 fax or email, one day after transmission.
- 12.6.3. The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

### 12.7. Third party rights

The parties do not intend that any Contract or any provisions of these Conditions will be enforceable by any person not party to it.

## 13. Applicable Law and Jurisdiction

- 13.1. All issues, questions and disputes concerning the existence, validity, interpretation, enforcement, performance or termination of a Contract or these Conditions shall be governed by and construed in accordance with the laws of the country where Low & Bonar has its registered address, without giving effect to any other choice of law or conflict-of-laws rules or provisions that would cause the laws of any other jurisdiction to be applicable. The applicability of the United Nations Convention on Contracts for the International Sale of Goods (1980) is expressly excluded.
- 13.2. The courts with jurisdiction where Low & Bonar has its registered address shall have exclusive jurisdiction to settle any dispute or claim arising out of or concerning the existence, validity, interpretation, enforcement, performance or termination of any Contract concluded under these Conditions. Nothing in this clause 13.2 shall limit the right of Low & Bonar to take proceedings against the Customer in any other court of jurisdiction where the Customer has a place of business, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.
- 13.3. Nothing in these Conditions or in any Contract shall prevent either Party from approaching the appropriate court for urgent relief.
- 13.4. Customer shall comply with all applicable laws, regulations and ordinances. Customer shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations. Customer shall comply with all export and import laws of all countries involved in the sale of the Goods under this Agreement or any resale of the Goods by Customer. Customer assumes all responsibility for shipments of Goods requiring any government import clearance. Seller may terminate this Agreement if any governmental authority imposes antidumping or countervailing duties or any other penalties on Goods.
- 13.5. The relationship between the parties is that of independent contractors. Nothing contained herein shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.