

**LOW & BONAR DUNDEE LIMITED("The Seller")**  
**CONDITIONS OF SALE**

1.1 These Conditions alone shall govern and be incorporated in every contract for the sale of goods made by or on behalf of the Seller with any customer ("the Buyer"). They shall apply in place of and prevail over any terms or conditions, (whether or not in conflict or inconsistent with these Conditions), contained or referred to in any documents submitted by the Buyer or in correspondence or elsewhere implied by the course of dealing unless specifically excluded or varied in writing by a director or other authorised representative of the Seller and any purported provisions to the contrary are hereby excluded or extinguished.

1.2 Acceptance by the Buyer of delivery of the goods shall (without prejudice to Condition 2 or any other manner in which acceptance of these Conditions may be evidenced) be deemed to constitute unqualified acceptance of the Conditions.

1.3 If, subsequent to any contract of sale which is subject to these Conditions, a contract of sale is made with the same buyer without reference to any conditions of sale or purchase, such contract however made shall be deemed to be subject to these Conditions.

**2. QUOTATIONS AND ACCEPTANCE**

2.1 A quotation by the Seller does not constitute an offer and the Seller reserves the right to withdraw or revise the same at any time prior to the Seller's acceptance of the Buyer's order. Any quotations shall in any event lapse unless the Seller accepts an order from the Buyer within 30 days of the quotation.

2.2 The Seller's acceptance of the Buyer's order (including telephone orders) shall be effective only where such acceptance is made on the Seller's printed Order Acceptance form.

**3. PRICES**

3.1 The prices payable for the goods shall be those shown on the Seller's Order Acceptance form. The Seller shall have the right at any time to revise prices to take into account inflation and/or increases in costs including (without limitation) costs of any goods, materials, carriage, labour or overheads, the increase or imposition of any tax duty or other levy and any variation in exchange rates.

3.2 Unless otherwise specified VAT and any other tax or duties payable by the Buyer shall be added to the price.

3.3 When prices are quoted 'CIF' or 'CIF duty paid' or 'free delivered' to any delivery address outside the United Kingdom, then any increase in insurance, packing or freight costs or duties or taxes applicable to delivery of the goods between acceptance of the Buyer's Order and delivery (together with all costs of any trans-shipment and/or deviation of voyage) shall be paid by the Buyer.

**4. TERMS OF PAYMENT**

4.1 Payment of invoices shall be made in full without any deduction or set-off in accordance with the terms stated on the Seller's Order Acceptance form and invoice. Time of payments shall be of the essence of all contracts between the Buyer and the Seller. The Seller reserves the right to suspend the provision of goods to the Buyer where any amounts are overdue under any contract with the Buyer until all such amounts have been paid.

4.2 Interest shall be payable at the rate of 3% over Royal Bank of Scotland plc base rate from time to time to run from the due date for payment until receipt by the Seller of the full amount.

4.3 Any credit given by the Seller to the Buyer may be withdrawn or limited at any time by the Seller on such notice as the Seller may think fit and consequently the Seller may refuse to deliver all or part of the goods other than against due tender of the price in accordance with any contract to which these Conditions apply.

4.4 All payments made by the Buyer to the Seller shall be apportioned first to goods which have been resold by the Buyer and then to goods which remain in possession or under control of the Buyer notwithstanding any purported contrary apportionment by the Buyer.

**5. DELIVERY**

5.1 Delivery or despatch dates mentioned in any quotation, order acceptance form or elsewhere are approximate only and not of contractual effect and the Seller shall not be under any liability to the Buyer in respect of any failure to deliver on any particular date or dates. Time for delivery shall not be of the essence of any contract to which these Conditions apply and shall not be made so by the service of any notice. All orders for goods endorsed delivery as required or with no final completion date for deliveries are accepted on condition that the Seller is given reasonable time to make the goods and that full delivery of the goods taken within 6 months of the Seller's acceptance.

5.2 Delivery will be on a 'Delivered', 'FOB' or 'Ex works' basis as stated on the Order Acknowledgement form. In the case of a sale 'ex works' the Seller shall not be liable for any loss or damage caused by any incident occurring during transit from its premises.

5.3 If the Buyer refuses or fails to take delivery of goods tendered in accordance with the contract or fails to take action necessary on its part for delivery and/or shipment of the goods the Seller shall be entitled to terminate the contract with immediate effect, to dispose of the goods as the Seller may determine, and to recover from the Buyer any loss and additional costs incurred as a result of such refusal or failure (including without limitation storage costs from the due date of delivery).

5.4 Unless otherwise expressly agreed the Seller may effect delivery in one or more instalments. Where delivery is effected by instalments each instalment shall be treated as a separate contract.

5.5 Section 32(2) of the Sale of Goods Act 1979 shall not apply. The Seller shall not be required to give the Buyer the notice specified in Section 32(2) of that Act.

**6. RISK AND INSURANCE**

6.1 Subject (where appropriate) to Condition 7 risk shall pass on delivery.

6.2 Any property of the Buyer in or under the Seller's possession or control and all property supplied to the Seller on behalf of the Buyer shall be held by the Seller at the Buyer's risk.

6.3 From time of delivery until property in the goods passes to the Buyer in accordance with Condition 8 the Buyer shall insure the goods for their full value with a reputable insurance office. Upon request, the Buyer shall use reasonable endeavours to get the Seller's interest in the goods noted on the insurance policy. Until property in the goods passes to the Buyer the proceeds of any claim on such insurance policy shall be held on trust for the Seller and shall forthwith account to the Seller with such proceeds.

6.4 Any goods returned by the Buyer to the Seller shall be at the Buyer's risk unless their returns is at the Seller's request.

**7. EXPORT SALES**

7.1 In any case where the goods are sold CIF OR FOB or on the basis of any other international trade terms the meaning given to such terms in the I.C.C. Incoterms (as revised from time to time) shall apply except where inconsistent with any of the provisions contained in these Conditions. Where goods are sold CIF the Seller has the option of insuring under its floating and/or general policies but shall provide a certificate of such insurance if requested to do so by the Buyer. Where goods are sold FAS, FOB or FREE the Seller will on the same basis insure the outward voyage if requested by and for the account of the Buyer.

**8. TITLE**

8.1 THE RISK IN THE GOODS SHALL PASS FROM THE SELLER TO THE BUYER UPON DELIVERY OF SUCH GOODS TO THE BUYER. HOWEVER, NOTWITHSTANDING DELIVERY AND THE PASSING OF RISK IN THE GOODS, TITLE AND PROPERTY IN THE GOODS, INCLUDING FULL LEGAL AND BENEFICIAL OWNERSHIP, SHALL NOT PASS TO THE BUYER UNTIL THE SELLER HAS RECEIVED IN CASH OR CLEARED FUNDS PAYMENT IN FULL FOR ALL GOODS DELIVERED TO THE BUYER UNDER THIS AND ALL OTHER CONTRACTS BETWEEN THE SELLER AND THE BUYER FOR WHICH PAYMENT OF THE FULL PRICE OF THE GOODS THEREUNDER HAS NOT BEEN PAID. PAYMENT OF THE FULL PRICE OF THE GOODS SHALL INCLUDE THE AMOUNT OF INTEREST OR OTHER SUM PAYABLE UNDER THE TERMS OF THIS AND ALL OTHER CONTRACTS BETWEEN THE SELLER AND THE BUYER UNDER WHICH THE GOODS WERE DELIVERED.

8.2 Until property in the goods has passed the Buyer shall be in possession of the goods in a fiduciary capacity and shall:

(a) not part with possession of the goods otherwise than in accordance with Condition 8.6;

(b) take proper care of the goods and take all reasonable steps to prevent any damage to or deterioration of them;

(c) keep the goods free from any charge, lien or other encumbrance and store the goods in such a way as to show clearly that they belong to the Seller; and

(d) notify the Seller forthwith upon the happening of any of the events set out in Condition 16.1.

8.3 The Seller reserves the right to repossess and resell any goods to which it has retained title and any right the Buyer may have to possession of the goods shall in any event cease.

(a) if any sum owed by the Buyer to the Seller (whether in respect of the goods or otherwise) is not paid to the Seller by the date it is due, or

(b) upon the happening of any of the events set out in Condition 16.1.

8.4 The Buyer hereby grants an interest and licence to the Seller and its servants and agents to enter all or any of the Buyer's premises with or without vehicles during normal business hours for the purpose of inspecting and/or repossessing goods to which it has retained title. This right and licence shall continue to subsist notwithstanding the termination for any reason of any contract which is subject to these Conditions and is without prejudice to any accrued rights of the Seller under such contracts or otherwise.

8.5 The Buyer is licensed by the Seller to process goods to which the Seller has retained title in such fashion as it may wish and/or incorporate them in or with any other products subject to the express condition that the new product or products or any other items of moveable property whatsoever containing any part of the said goods shall become the property of the Seller and shall be separately stored and marked by the Buyer in show clearly that they belong to the Seller. The Seller shall hold the new product or products as trustee for itself and the Seller's interest as a beneficiary of the trust shall be equal to the total of all amounts owing by the Buyer to the Seller.

8.6 The Buyer may in the ordinary course of business sell the goods or any new product or products produced with the Seller's goods provided that:

(a) as between the Buyer and its sub-buyer or customer the Buyer shall sell the goods as principal and the Buyer shall not and shall not be empowered to commit the Seller to any contractual relationship with or liability to the sub-buyer or customer or any other person;

(b) as between the Seller and the Buyer, the Buyer shall sell the goods in a fiduciary capacity as agent for the Seller, and

(c) notwithstanding any agreed payment of credit for payment of the price of the goods the Buyer shall pay the proceeds of such sales to the Seller forthwith upon receipt.

The Buyer acknowledges that as a consequence of its fiduciary relationship with the Seller it is under a common law duty to hold the proceeds of any such sales or hiring or trust for the Seller and not to mingle such proceeds with any other monies or pay them into an overdrawn bank account, such common law duty being unaffected by and wholly independent of the terms of these Conditions.

8.7 Notwithstanding the provisions of this Condition 8 the Seller shall be entitled to bring an action against the Buyer for the price of the goods in the event of non-payment by the Buyer by the due date even though the property in the goods has not passed to the Buyer and/or shall have the right by notice to the Buyer at any time after delivery to pass property in the goods to the Buyer is from the date of such notice.

**9. VARIATION IN QUANTITY**

The Seller shall be deemed to have fulfilled its contractual obligations in respect of any delivery even though the quantity may be up to 10% more or less than the quantity specified in the contract and in such event the Buyer shall pay for the actual quantity delivered. Weights and sizes of the goods are taken on the average of the total amount of goods despatched. Weights are guaranteed only at the date of despatch.

**10. THIRD PARTY RIGHTS**

10.1 THE BUYER SHALL INDEMNIFY THE SELLER against any and all liabilities, claims and costs incurred by or made against the Seller as a direct or indirect result of the carrying out of any work required to be done on or to the goods in accordance with the requirements or specifications of the Buyer involving any infringement or alleged infringement of any rights of any third party (including without limitation the printing of any libellous or illegal matter on the goods).

10.2 IN RESPECT OF EXPORT SALES ONLY, THE SELLER SHALL HAVE NO LIABILITY TO THE BUYER IN THE EVENT OF THE GOODS INFRINGING OR BEING ALLEGED TO INFRINGE THE RIGHTS OF ANY THIRD PARTY. In the event that the goods are or may be the subject of third party rights the Seller shall be obliged to transfer to the Buyer only such title as the Seller may have.

IN RESPECT OF ALL OTHER SALES, if at any time any allegation or infringement of letters patent, copyright or design rights is made in respect of the goods or if in the Seller's reasonable opinion such an allegation is likely to be made, the Seller may at its option and at its own expense:

(a) modify or replace the goods without detracting from overall performance thereof, so as to avoid the infringement; or

(b) procure for the Buyer the rights to continue to use the goods; or

(c) repurchase the goods at the price paid by the Buyer less depreciation at such rate as is applied by the Seller to its own equipment.

10.3 The Buyer shall notify the Seller forthwith of any claims made or action brought or threatened alleging infringement of the rights of any third party. The Seller shall have control over and shall conduct any such proceedings in such manner as it shall determine. The Buyer shall provide all such reasonable assistance as the Seller may request. The cost of any such proceedings shall be borne by the Seller.

10.4 Where the Seller or its employees or agents design the goods pursuant to a commission from the Buyer (whether in consideration of an order or otherwise) then the Buyer assigns the design right in that design (and the right to apply for registration of that design, if applicable) to the Seller.

**11. LIABILITY**

11.1 THE BUYER SHALL INSPECT THE GOODS IMMEDIATELY UPON DELIVERY. THE SELLER SHALL NOT BE LIABLE TO THE BUYER:-

(a) FOR NON-DELIVERY UNLESS A WRITTEN CLAIM IS RECEIVED BY THE SELLER WITHIN 7 DAYS FROM THE DATE OF THE SELLER'S INVOICE (OR 28 DAYS FROM SUCH DATE IN RESPECT OF EXPORT SALES);

(b) FOR SHORTAGES IN QUANTITY DELIVERED IN EXCESS OF THOSE PERMITTED BY CONDITION 9 UNLESS THE BUYER NOTIFIES THE SELLER OF ANY CLAIM FOR SHORT DELIVERY WITHIN 7 DAYS OF RECEIPT OF THE GOODS OR (28 DAYS FROM SUCH DATE IN RESPECT OF EXPORT SALE);

(c) FOR DAMAGE TO OR LOSS OF THE GOODS OR ANY PART OF THEM IN TRANSIT (WHERE THE GOODS ARE CARRIED BY THE SELLER'S OWN TRANSPORT OR BY A CARRIER ON BEHALF OF THE SELLER) UNLESS THE BUYER SHALL NOTIFY THE SELLER OF ANY SUCH CLAIM WITHIN 14 DAYS OF RECEIPT OF THE GOODS OR THE SCHEDULED DATE OF DELIVERY WHICHEVER SHALL BE THE EARLIER (OR 28 DAYS FROM SUCH DATE IN RESPECT OF EXPORT SALES);

(d) FOR THE DEFECTS IN THE GOODS CAUSED BY FAIR WEAR AND TEAR, ABNORMAL OR UNSUITABLE CONDITIONS CARRIED BY THE SELLER'S OWN TRANSPORT OR BY A CARRIER ON BEHALF OF THE SELLER (OR OF ANY THIRD PARTY);

(e) FOR OTHER DEFECTS IN THE GOODS UNLESS NOTIFIED TO THE SELLER WITHIN 1 MONTH RECEIPT OF THE GOODS BY THE BUYER OR WHERE THE DEFECT WOULD NOT BE APPARENT ON REASONABLE INSPECTION WITHIN 3 MONTHS OF DELIVERY.

11.2 WHERE LIABILITY IS ACCEPTED BY THE SELLER UNDER CONDITION 11.1 THE SELLER'S ONLY OBLIGATION SHALL BE AT ITS OPTION TO MAKE GOOD ANY SHORTAGE OR NON-DELIVERY AND/OR AS APPROPRIATE TO REPLACE OR REPAIR ANY GOODS FOUND TO BE DAMAGED OR DEFECTIVE AND/OR TO REFUND THE COST OF SUCH GOODS TO THE BUYER. GOODS MAY NOT BE RETURNED WITHOUT THE SELLER'S PRIOR WRITTEN CONSENT.

11.3 THE SELLER SHALL NOT BE LIABLE FOR ANY LOSS, DAMAGE OR LIABILITY OF ANY KIND SUFFERED BY ANY THIRD PARTY DIRECTLY OR INDIRECTLY CAUSED BY REPAIRS OR REMEDIAL WORK CARRIED OUT WITHOUT THE SELLER'S PRIOR WRITTEN APPROVAL AND THE BUYER SHALL INDEMNIFY THE SELLER AGAINST ANY AND ALL CLAIMS AND COSTS ARISING OUT OF SUCH CLAIMS TO THE EXTENT THAT SUCH REPAIRS OR REMEDIAL WORK HAVE BEEN PERFORMED BY THE BUYER OR ITS AGENTS.

11.4 THE SELLER'S AGGREGATE LIABILITY TO THE BUYER WHETHER FOR NEGLIGENCE, BREACH OF CONTRACT, MISREPRESENTATION OR OTHERWISE SHALL IN NO CIRCUMSTANCE EXCEED THE COST OF THE DEFECTIVE, DAMAGED OR UNDELIVERED GOODS WHICH GIVE RISE TO SUCH LIABILITY AS DETERMINED BY NET PRICE INVOICED TO THE BUYER IN HOWSOEVER CAUSED, AND INCLUDING WITHOUT LIMITATION, LOSS OF ANTICIPATED PROFITS, GOODWILL, REPUTATION, BUSINESS RECEIPTS OR CONTRACTS, OR LOSSES OR EXPENSES RESULTING FROM THIRD PARTY CLAIMS.

12. SPECIFICATIONS AND CONFIDENTIALITY

12.1 Unless expressly agreed in writing by the Seller all drawings, designs, specifications and particulars of weights and dimensions submitted by the Seller are approximate only and the Seller shall not be liable in respect of any deviation from them. The Seller accepts no responsibility for any errors, omissions or other defects in any drawings, designs or specifications not prepared by the Seller and the Seller shall be indemnified by the Buyer of any liabilities and expenses incurred by the Seller arising from them. Corrections to goods required by the Buyer following inspection and approval of proofs by the Buyer shall be at the Buyer's expense and will be charged for separately.

12.2 All drawings, designs, specifications and information submitted by the Seller shall be treated as confidential and shall not be disclosed to any third party without the Seller's written consent or used by the Buyer other than for the purpose authorised by the Seller.

13. LICENCES AND CONSENTS

If any licence consent by any government or other authority shall be required for the acquisition, carriage or use of the goods by the Buyer the Seller shall obtain the same at its own expense and if requested produce evidence of the same to the Seller on demand. Failure to obtain any licence or consent shall not entitle the Buyer to withhold or delay payment of the price. Any additional expenses or charges incurred by the Seller resulting from such failure shall be for the Buyer's account.

14. FORCE MAJEURE

14.1 The Seller shall not be liable to the Buyer for any loss or damage which may be suffered by the Buyer as a direct or indirect result of the supply of goods by the Seller being prevented, hindered, delayed, cancelled or rendered uneconomic by reason of circumstances or events beyond the Seller's reasonable control ('force majeure circumstances') including but not limited to Act of God, war, riot, strike, lock out, trade dispute or labour disturbance, accident, break-down of plant or machinery, fire, flood, storm, difficulty or increased expense in obtaining workmen, materials or transport, or other circumstances affecting the supply of the goods or of raw materials by the Seller's normal source of supply or manufacture or the goods by the Seller's normal means of delivery of the goods by the Seller's normal route or means of delivery.

14.2 In force majeure circumstances the Seller may in its sole discretion terminate any contract for the supply of goods pursuant to these Conditions or cancel delivery of goods to the Buyer or may, with the agreement of the Buyer, deliver the goods at an agreed rate of delivery commencing after any suspension of deliveries.

14.3 If due to force majeure circumstances the Seller has insufficient stocks to meet all its commitments the Seller may appoint available stocks between its customers at its sole discretion.

15. SAMPLES & EQUIPMENT

15.1 Any samples or trade cards supplied to the Buyer are supplied solely for information and in no way import any express or implied conditions or warranties as to quality, description, fitness for purpose or merchantable quality and the Buyer shall be deemed to have satisfied itself as to such matters prior to ordering the goods.

15.2 Any equipment supplied to the Buyer in connection with the delivery of the goods shall remain the Seller's property notwithstanding any contribution made towards its cost by the Buyer.

16. TERMINATION

16.1 If the Buyer (being an individual) enters into a voluntary arrangement or if a petition is presented for the making of a bankruptcy order against him or if he compounds with his creditors or if (being a company) an application for an order is made or a resolution is passed for the winding-up of the Buyer (otherwise than for the purpose of amalgamation or reconstruction previously approved in writing by the Seller) or if a meeting is called to approve the appointment of a liquidator to the Buyer or if a petition is presented to the Court for the appointment of a liquidator to the Buyer or if a receiver, manager, administrative receiver or an administrator is appointed or a petition is presented to the Court for the appointment of an administrator to the Buyer or over any part of the Buyer's undertaking or if circumstances arise which may entitle the Court or a creditor of the Buyer to appoint a receiver, manager, administrative receiver or administrator or which might entitle the Court to make a winding-up order or if the Buyer takes or suffers any similar or analogous action in consequence of debt or commits a breach of any contract between the Seller and the Buyer the Seller may without prejudice to any of its other rights stop any goods in transit and/or by notice in writing to the Buyer terminate any contract with the Buyer.

16.2 Upon any termination of any contracts pursuant to Condition 16.1 any indebtedness of the Buyer to the Seller shall become immediately due and payable and the Seller shall be relieved any further obligation to supply any goods to the Buyer pursuant to such contracts.

17. ASSIGNMENT

None of the rights or obligations of the Buyer under these Conditions may be assigned or transferred in whole or in part without the prior written consent of the Seller.

18. HEALTH AND SAFETY AT WORK ETC.

The Buyer agrees to pay due regard to any information supplied by the Seller and relating to the use for which the goods are designed or have been tested or concerning conditions necessary to ensure that they will be safe and without risk to health at all times when they are being set, used, cleaned or maintained by any person at work and the Buyer undertakes to take such steps as may be specified by the above information to ensure that as far as reasonable practicable the goods will be safe and without risks to health at all times as are mentioned above.

19. LIEN

The Seller shall be entitled to general lien on all goods and property owned by the Buyer in the Seller's possession (although the Buyer may have paid for the same in full) in satisfaction of the whole or part as the case may be of the unpaid price of any goods sold and delivered to the Buyer under any contract. The Seller shall be entitled to offset any sum or sums owing to it from the Buyer against any sums owed to the Buyer from the Seller.

20. HEADINGS

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

21. SEVERABILITY

If any of these Conditions is held to be invalid, illegal or unenforceable in any respect whether in whole or in part such invalidity, illegality, unenforceability shall not prejudice the effectiveness of the rest of these Conditions or the remainder of any part of a Condition affected.

22. WAIVER

Failure by the Seller to exercise or enforce any rights under any contract subject to these Conditions shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement of such right at any time thereafter.

23. NOTICES

Any notice hereunder shall be in writing and be deemed to have been duly given if delivered personally or sent by prepaid first class post (airmail if to an address outside the United Kingdom), telex or telefax to the party concerned at its last known address. Notices delivered personally shall be deemed to have been given when delivered, notice sent by first class post shall be deemed to have been given seven days after despatch (fourteen days if given by airmail) and notices sent by telex and telefax shall be deemed to have been given on the date of despatch.

24. GOVERNING LAW

Any contract to which these Conditions apply shall be governed by and construed in accordance with the laws of England and parties hereby submit to the non-exclusive jurisdiction of the English Courts.