

DOBY VERROLEC TERMS AND CONDITIONS OF SALE

The Buyer's attention is drawn in particular to the provisions of clause 7.

1 Basis of Contract

- 1.1 These Conditions apply to the Contract made between Doby Cleats Limited, trading as Doby Verrolec a company registered in England and Wales with company number 00952089 and registered office address at Harelaw Industrial Estate, Stanley, County Durham, DH9 8UJ ("**Company**") and the buyer of the Company's products ("**Buyer**"), to the exclusion of any other terms that the Buyer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 1.2 The Buyer's order for the goods, as set out in the Buyer's purchase order ("**Order**") constitutes an offer by the Buyer to purchase the goods in accordance with these Conditions. The Buyer is responsible for ensuring that the terms of the Order are complete and accurate.
- 1.3 The Order shall only be deemed to be accepted when the Company issues a written acceptance of the Order ("**Order Confirmation**"), at which point the Contract shall come into existence.
- 1.4 Any samples, drawings or advertising produced by the Company and any descriptions, illustrations or prices display on the Company's website are produced for the sole purpose of giving an approximate idea of the goods referred to in them. They shall not form part of the Contract nor have any contractual force.
- 1.5 A quotation for the Goods given by the Company shall not constitute an offer. A quotation shall only be valid for a period of 30 calendar days from its date of issue.
- 1.6 A reference to writing or written excludes fax but not email.

2 Goods

- 2.1 The goods are described in the purchase order ("**Goods**"). To the extent that the Goods are to be manufactured in accordance with a specification supplied by the Buyer, the Buyer shall indemnify the Company 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 the Company in connection with any claim made against the Company for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Company's use of the specification. This clause 2.1 shall survive termination of the Contract.
- 2.2 The Company reserves the right to amend the specification if required by any applicable statutory or regulatory requirement, and the Company shall notify the Buyer in any such event.
- 2.3 If the Company will be designing bespoke Goods in accordance with the Buyer's specification, the Company will submit to the Buyer for approval pre-production samples and/or design drawings of the Goods.
- 2.4 The Company shall not commence manufacture of the Goods until the Buyer has communicated its approval of the samples or design drawing to the Company in writing. If the Buyer fails to

communicate its approval within 14 calendar days from receipt of the sample or design drawings sent by the Company, the Buyer shall be deemed to have approved the samples or design drawings.

- 2.5 The Buyer's approval of the samples constitutes irrevocable confirmation that Goods manufactured in conformity with the samples (or differing only within normal industrial limits) will comply with the Buyer's specification and the Goods will meet industry standards and requirements or quality.
- 2.6 The Company will use reasonable skill and care in designing the Goods and performing any other services agreed with the Buyer.
- 2.7 If the Buyer provides the Company with designs or drawings, the Company acknowledges that the Intellectual Property Rights vested in such designs, drawings other documentation provided by the Buyer belongs to the Buyer and remains the exclusive property of the Buyer or, where applicable, the third-party licensor from whom the Buyer derives the right to use them.
- 2.8 The Buyer acknowledges that all Intellectual Property Rights used for the manufacture of the Products that originate from the Company, including but not limited to tooling and machinery, belongs to the Company and shall remain the exclusive property of the Company or, where applicable, the third-party licensor from whom the Company derives the right to use them.
- 2.9 For the purpose of this clause 2, Intellectual Property Rights means patents, utility models, rights to inventions, copyright and] related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

3 **Delivery**

- 3.1 The Order Confirmation will confirm whether the Company is delivering the Goods to the location set out in the Order Confirmation or whether the Buyer is collecting the Goods from the Company's premises at Harelaw Industrial Estate, County Durham, DH9 9UJ.
- 3.2 Delivery is completed on the completion of unloading (in the case of delivery) or loading (in the case of collection) of the Goods at the location stated in the Order Confirmation.
- 3.3 Any dates quoted for delivery or collection are approximate only, and the time of delivery is not of the essence. The Company shall not be liable for any delay in delivery of the Goods that is caused by an event, circumstance or cause beyond a party's reasonable control ("**Force Majeure Event**") or the Buyer's failure to provide the Company with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 3.4 If the Company fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Buyer in obtaining replacement Goods of similar description and quality in the cheapest market available, less the price of the Goods. The Company shall have no liability for

any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Buyer's failure to provide the Company with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

- 3.5 If the Buyer fails to take (in the case of collection) or accept (in the case of delivery) the Goods within four Business Days of the Company notifying the Buyer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or the Company's failure to comply with its obligations under the Contract in respect of the Goods:
- a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the fourth Business Day after the day on which the Company notified the Buyer that the Goods were ready; and
 - b) the Company shall store the Goods until actual delivery takes place, and charge the Buyer for all related costs and expenses (including insurance).
- 3.6 If five Business Days after the day on which the Company notified the Buyer that the Goods were ready for delivery the Buyer has not taken actual delivery of them, the Company may resell or otherwise dispose of part or all of the Goods charge the Buyer for any shortfall below the price of the Goods. If the Goods are bespoke and have been designed by the Company for the Buyer only, and cannot be resold, the Company shall charge the Buyer for the full price of those Goods.
- 3.7 The Company may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Buyer to cancel any other instalment.

4 **Quality**

- 4.1 The Company warrants that on delivery, and for a period of 12 months from the date of delivery (**Warranty Period**), the Goods shall conform with their description and any applicable specification, be free from material defects in design, material and workmanship and be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).
- 4.2 Subject to clause 4.3, if:
- a) the Buyer gives notice in writing to the Company during the Warranty Period within a reasonable time of discover that some or all of the Goods do not comply with the warranty set out in clause 4.1; and
 - b) the Company is given a reasonable opportunity of examining such Goods; and
 - c) the Buyer (if asked to do so by the Company) returns such Goods to the Company's place of business at the Buyer's cost,
- the Company shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.
- 4.3 The Company shall not be liable for the Goods' failure to comply with the warranty set out in clause 4.1 if:

- a) the Buyer makes any further use of such Goods after giving notice in accordance with clause 4.2;
- b) the defect arises because the Buyer failed to follow the Company'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;
- c) the defect arises as a result of the Company following any drawing, design or specification supplied by the Buyer;
- d) the Buyer alters or repairs such Goods without the written consent of the Company;
- e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
- f) the Buyer uses the Goods for something other than the recommended use of the Goods which the Company makes known to the Buyer;
- g) the Goods differ from their description and any applicable specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

4.4 Except as provided in this clause 4, the Company shall have no liability to the Buyer in respect of the Goods' failure to comply with the warranty set out in clause 4.1.

4.5 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

4.6 These Conditions shall apply to any repaired or replacement Goods supplied by the Company.

5 **Title and Risk**

5.1 The risk in the Goods shall pass to the Buyer when the Goods are unloaded (in the case of delivery) or loaded (in the case of collection) at the address stated on the Order Confirmation.

5.2 Title to the Goods shall not pass to the Buyer until the earlier of the Company receiving payment in full (in cash or cleared funds) and any other Goods that the Company has supplied to the Buyer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums for the Goods or the Buyer resells the Goods, in which case title to the Goods shall pass to the Buyer at the time specified in clause 5.4.

5.3 Until title to the Goods has passed to the Buyer, the Buyer shall:

- a) store the Goods separately from all other Goods held by the Buyer so that they remain readily identifiable as the Company's property;
- b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
- d) notify the Company immediately if it becomes subject to any of the events listed in clause 8.1(b) – (d); and

e) give the Company such information as the Company may reasonably require from time to time relating to the Goods and the ongoing financial position of the Buyer.

5.4 Subject to clause 5.5, the Buyer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Company receives payment for the Goods. However, if the Buyer resells the Goods before that time, it does so as principal and not as the Company's agent and title to the Goods shall pass from the Company to the Buyer immediately before the time at which resale by the Buyer occurs.

5.5 At any time before title to the Goods passes to the Buyer, the Company may, by notice in writing, terminate the Buyer's right under clause 5.4 to resell the Goods or use them in the ordinary course of its business, and require the Buyer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product and if the Buyer fails to do so promptly, enter any premises of the Buyer or of any third party where the Goods are stored in order to recover them.

6 **Price and Payment**

6.1 The price of the Goods shall be the price set out in the Order and excludes amounts in respect of value added tax (**VAT**), which the Buyer shall additionally be liable to pay to the Company at the prevailing rate, subject to the receipt of a valid VAT invoice, and excludes the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Buyer.

6.2 The Company may invoice the Buyer for the Goods on or at any time after the completion of delivery.

6.3 The Buyer shall pay each invoice submitted by the Company in accordance with the Order Confirmation, or as otherwise agreed between the parties in writing, and in full and in cleared funds to a bank account nominated in writing by the Company. Time for payment shall be of the essence of the Contract.

6.4 If the Buyer fails to make a payment due to the Company under the Contract by the due date, then, without limiting the Company's remedies under clause 8, the Buyer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 6.4 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

6.5 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

7 **Limitation of Liability**

7.1 References to liability in this clause 7 include every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

7.2 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:

a) death or personal injury caused by negligence;

- b) fraud or fraudulent misrepresentation;
- c) breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
- d) defective goods under the Consumer Protection Act 1987.

7.3 Subject to clause 7.2, the Company's total liability to the Buyer in relation to a single Order shall not exceed the amount stated on the Order Confirmation for that Order.

7.4 Subject to clause 7.2, the following types of loss are wholly excluded:

- a) loss of profits;
- b) loss of sales or business;
- c) loss of agreements or contracts;
- d) loss of anticipated savings;
- e) loss of use or corruption of software, data or information;
- f) loss of or damage to goodwill; and
- g) indirect or consequential loss.

7.5 This clause 7 shall survive termination of the Contract.

8 **Termination**

8.1 Without limiting its other rights or remedies, the Company may terminate this Contract with immediate effect by giving written notice to the Buyer if:

- a) the Buyer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 7 days of that party being notified in writing to do so;
- b) the Buyer 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), obtaining a moratorium, 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;
- c) the Buyer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
- d) the Buyer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.

8.2 Without limiting its other rights or remedies, the Company may suspend provision of the Goods under the Contract or any other contract between the Buyer and the Company if the Buyer becomes subject to any of the events listed in clause 8.1(b) – (d), or the Company reasonably

believes that the Buyer is about to become subject to any of them, or if the Buyer fails to pay any amount due under this Contract on the due date for payment.

8.3 Without limiting its other rights or remedies, the Company may terminate the Contract with immediate effect by giving written notice to the Buyer if the Buyer fails to pay any amount due under the Contract on the due date for payment.

8.4 On termination of the Contract for any reason the Buyer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of Goods supplied but for which no invoice has been submitted, the Company shall submit an invoice, which shall be payable by the Buyer immediately on receipt.

8.5 Termination or expiry of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

8.6 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

9 **Force Majeure**

Neither party shall be in breach of the Contract or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from a Force Majeure Event. The time for performance of such obligations shall be extended accordingly.

10 **General**

10.1 **Assignment and other dealings.** The Company may at any time assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.

The Buyer may not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Company.

10.2 **Confidentiality.** Each party undertakes that it shall not at any time during the Contract and for a period of 2 years after termination or expiry of the Contract, disclose to any person any confidential information concerning the business, assets, affairs, Buyers, clients or suppliers of the other party, except as permitted by this clause 10.2.

Each party may disclose the other party's confidential information to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under the Contract. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 10.2, and as may be required by law, a court of competent jurisdiction or any government or regulatory authority.

Neither party shall use the other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

- 10.3 **Entire agreement.** The Contract constitutes the entire agreement between the parties. Each party acknowledges that in entering into the Contract it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in the Contract.
- 10.4 **Variation.** No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 10.5 **Waiver.** A waiver of any right or remedy is only effective if given in writing [and shall not be deemed a waiver of any subsequent right or remedy.
- A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.
- 10.6 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision of the Contract is deemed deleted under this clause 10.6 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 10.7 **Notices.** Any notice given to a party under or in connection with the Contract shall be in writing and shall either be delivered by hand, pre-paid post or airmail at its registered office (if a company) or its principal place of business (in any other case), or sent by email to accounts@dobyverrolec.com for the Company and to the email address notified in writing by the Buyer to the Company.
- Any notice shall be deemed to have been received if delivered by hand, on signature of a delivery receipt, if sent by pre-paid post or airmail, at 9:00am on the fifth Business Day after posting, or if sent by email, at the time of transmission, or if this time falls outside business hours in the place of receipt, when business hours resume.
- This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- 10.8 **Third party rights.** The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 10.9 **Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.
- 10.10 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.