



Doby Verrolec Terms and Conditions of Purchase

1 Basis of Contract

- 1.1 These Conditions apply to the Contract made between the supplier of the goods ("**Supplier**") to 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 ("**Purchaser**"), to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 1.2 The Purchaser's order for the goods, as set out in the Purchaser's purchase order ("**Order**") constitutes an offer by the Purchaser to purchase the goods in accordance with these Conditions.
- 1.3 The Order shall be deemed to be accepted on the earlier of, the Supplier issuing a written acceptance of the Order ("**Order Confirmation**") or the Supplier doing any act consistent with fulfilling the Order, at which point the Contract shall come into existence.
- 1.4 The Supplier waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Supplier that is inconsistent with these Conditions.
- 1.5 A reference to writing or written excludes fax but not email.

2 Goods

- 2.1 The Supplier shall ensure that the goods shall:
- a) correspond with their description and any applicable specification;
 - b) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by the Supplier or made known to the Supplier by the Purchaser expressly or by implication, and in this respect the Purchaser relies on the Supplier's skill and judgement;
 - c) where they are manufactured products, be free from defects in design, material and workmanship and remain so for 12 months after delivery, unless otherwise agreed between the parties in writing;
 - d) comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the goods.
- 2.2 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract.
- 2.3 The Purchaser may inspect and test the goods at any time before delivery. The Supplier shall remain fully responsible for the goods despite any such inspection or testing and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract.

2.4 If following such inspection or testing the Purchaser considers that the goods do not conform or are unlikely to comply with the Supplier's undertakings at clause 2.1, the Purchaser shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.

2.5 The Purchaser may conduct further inspections and tests after the Supplier has carried out its remedial actions.

3 **Delivery**

3.1 The Supplier shall ensure that:

- a) the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;
- b) each delivery of the goods is accompanied by a delivery note which shows the date of the Order, the Order number (if any), the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
- c) if the Supplier requires the Purchaser to return any packaging material to the Supplier, that fact is clearly stated on the delivery note. Any such packaging material shall be returned to the Supplier at the cost of the Supplier.

3.2 The Supplier shall deliver the goods on the date specified in the Order ("**Delivery Date**"), at the location specified in the Order ("**Delivery Location**") and at the time instructed by the Purchaser.

3.3 Delivery of the goods shall be completed on the completion of unloading the goods at the Delivery Location.

3.4 If the Supplier delivers less than 95% of the quantity of goods ordered, the Purchaser may reject the goods or, if the Purchaser accepts the goods, a pro rata adjustment shall be made to the invoice for the goods.

3.5 The Supplier shall not deliver the goods in instalments without the Purchaser's prior written consent. Where it is agreed that the goods are to be delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all, or any defect in an instalment shall entitle the Purchaser to the remedies set out in clause 4.

4 **Purchaser's Remedies**

4.1 If the goods are not delivered on the Delivery Date, or do not comply with the undertakings set out in clause 2.1, then, without limiting any of its other rights or remedies, and whether or not it has accepted the goods, the Purchaser may exercise any one or more of the following rights and remedies:

- 4.1.1 to terminate the Contract;

- 4.1.2 to reject the goods (in whole or in part) and return them to the Supplier at the Supplier's own risk and expense;
 - 4.1.3 to require the Supplier to repair or replace the rejected goods, or to provide a full refund of the price of the rejected goods (if paid);
 - 4.1.4 to refuse to accept any subsequent delivery of the goods which the Supplier attempts to make;
 - 4.1.5 to recover from the Supplier any costs incurred by the Purchaser in obtaining substitute goods from a third party; and
 - 4.1.6 to claim damages for any other costs, loss or expenses incurred by the Purchaser which are in any way attributable to the Supplier's failure to carry out its obligations under the Contract.
- 4.2 These Conditions shall apply to any repaired or replacement goods supplied by the Supplier.
- 4.3 The Purchaser's rights and remedies under these Conditions are in addition to its rights and remedies implied by statute and common law.
- 5 Title and Risk**
- Title and risk in the Goods shall pass to the Purchaser on completion of delivery.
- 6 Price and Payment**
- 6.1 The price of the Goods shall be the price set out in the Order, or, if no price is quoted, the price set out in the Supplier's published price list in force as at the date the Contract came into existence.
- 6.2 The price of the Goods excludes amounts in respect of value added tax (**VAT**), which the Purchaser shall additionally be liable to pay to the Supplier at the prevailing rate, subject to the receipt of a valid VAT invoice and includes the costs of packaging, insurance and carriage of the Goods. No extra charges shall be effective unless agreed in writing with the Purchaser.
- 6.3 The Supplier may invoice the Purchaser for the price of the Goods plus VAT at the prevailing rate (if applicable) on or at any time after the completion of delivery. The Supplier shall ensure that the invoice includes the date of the Order, the invoice number, the Purchaser's order number, the Supplier's VAT registration number and any supporting documents that the Purchaser may reasonably require.
- 6.4 The Purchaser shall pay correctly rendered invoices in accordance with the payment terms set out in the Order Confirmation, or as otherwise agreed between the parties in writing. Payment shall be made to the bank account nominated in writing by the Supplier.
- 6.5 The Purchaser may at any time, without notice to the Supplier, set off any liability of the Supplier to the Purchaser against any liability of the Purchaser to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract. If the liabilities to be set off are expressed in different currencies, the Purchaser may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by the

Purchaser of its rights under this clause shall not limit or affect any other rights or remedies available to it under the Contract or otherwise.

7 **Ownership of IP**

The Supplier acknowledges that all materials, equipment and tools, drawings, specifications, and data supplied by the Purchaser to the Supplier ("**Purchaser Materials**") and all rights in the Purchaser Materials are and shall remain the exclusive property of the Purchaser. The Supplier shall keep the Purchaser Materials in safe custody at its own risk, maintain them in good condition until returned to the Purchaser and not dispose or use the same other than in accordance with the Purchaser's written instructions or authorisation.

The Purchaser acknowledges that all materials, equipment and tools, drawings, specifications, and data supplied by the Supplier to the Purchaser ("**Supplier Materials**") and all rights in the Supplier Materials are and shall remain the exclusive property of the Supplier. The Purchaser shall keep the Supplier Materials in safe custody at its own risk, maintain them in good condition until returned to the Supplier and not dispose or use the same other than in accordance with the Supplier's written instructions or authorisation.

8 **Indemnity**

8.1 The Supplier shall indemnify the Purchaser 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 costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Purchaser as a result of or in connection with:

8.1.1 any claim made against the Purchaser for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the manufacture, supply or use of the goods, to the extent that the claim is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;

8.1.2 any claim made against the Purchaser by a third party for death, personal injury or damage to property arising out of or in connection with defects in Goods, to the extent that the defects in the Goods are attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors; and

8.1.3 any claim made against the Purchaser by a third party arising out of or in connection with the supply of the goods, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors.

8.2 This clause 8 shall survive termination of the Contract.

9 **Insurance**

During the term of the Contract [and for a period of 5 years thereafter], the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Contract, and shall, on the Purchaser's request, produce both the insurance

certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

10 **Termination**

10.1 The Purchaser may terminate the Contract in whole or in part at any time before delivery of the goods with immediate effect by giving the Supplier written notice, whereupon the Supplier shall discontinue all work on the Contract. The Purchaser shall pay the Supplier fair and reasonable compensation for any work in progress on the goods at the time of termination, but such compensation shall not include loss of anticipated profits or any consequential loss.

10.2 Without limiting its other rights or remedies, the Purchaser may terminate the Contract with immediate effect by giving written notice to the Supplier if:

- a) the Supplier 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 the Supplier being notified in writing to do so;
- b) the Supplier 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 Supplier takes any step or action in connection with the Supplier being made bankrupt, entering any composition or arrangement with its creditors, 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;
- d) the Supplier suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- e) the Supplier'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.

10.3 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.

10.4 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.

11 **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 events, circumstances or causes beyond its reasonable control. The time for performance of such obligations shall be extended accordingly. For the purpose of this clause 11, Force Majeure is an event, circumstance or cause beyond a party's reasonable control.

12 **General**

- 12.1 **Assignment and other dealings.** The Purchaser may at any time 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.

The Supplier may not assign, transfer, mortgage, charge, 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 Purchaser.

- 12.2 **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 12.2.

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 12.2, 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.

- 13 **Compliance With Relevant Laws and Policies.** In performing its obligations under the Contract, the Supplier shall comply with all applicable laws, statutes, regulations and codes from time to time in force. Breach of this clause 10 shall constitute an irremediable material breach of the Contract.

- 13.1 **Subcontracting.** The Supplier may not subcontract any or all of its rights or obligations under the Contract without the prior written consent of the Purchaser. If the Purchaser consents to any subcontracting by the Supplier, the Supplier shall remain responsible for all the acts and omissions of its subcontractors as if they were its own.

- 13.2 **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.

- 13.3 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the Purchaser.

- 13.4 **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.

13.5 **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 13.5 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.

13.6 **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.

13.7 **Third party rights.** Unless it expressly states otherwise, 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.

13.8 **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.

13.9 **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.