

## DAVID BALL GROUP STANDARD CONDITIONS OF PURCHASE

### 1. DEFINITIONS

In these Conditions:

“Company” means David Ball Group Limited (registered in England and Wales under 01890135) and its group of companies.

“Conditions” means the standard terms and conditions of purchase set out in this document and any variation of them which is otherwise agreed in accordance with these Conditions.

“Contract” means the contract between the Supplier and Company consisting of the Order, these Conditions and any other documents (or parts thereof) specified by the Company. Should there be any inconsistency between the documents comprising the Contract, they shall have precedence in the order listed within this definition.

“Delivery Address” means the address specified on the Order.

“Goods” means the goods (or any part thereof), plant or materials covered by the Order.

“Order” means the Company’s purchase order to which this Contract is annexed.

“Price” means the price of the Goods specified in the Order.

“Services” includes all services, labour and workmanship used in the performance of the Services required by or to be inferred by the Order.

“Supplier” means the person so described in the Order.

### 2. BASIS OF CONTRACT

- 2.1 The Order constitutes an offer by the Company to the Supplier to purchase the Goods and/or acquire the Services subject to these Conditions and shall be accepted by either the Supplier issuing an acknowledgment of order or (if earlier) delivering the Goods and/or Services.
- 2.2 These Conditions apply to the Contract to the exclusion of any other terms and conditions on which any quotation has been given to the Company or subject to which the Order is accepted or purported to be accepted by the Supplier.
- 2.3 The Order will lapse unless unconditionally accepted by the Supplier in writing within 7 days of its date.
- 2.4 No variation or addition to these Conditions (including the Supplier’s own terms) is effective unless expressly confirmed in writing by a director of the Company.
- 2.5 These Conditions shall also apply to all future transactions with the Supplier.

### 3. SPECIFICATIONS

- 3.1 The quantity, quality and description of the Goods and/or Services shall be as specified in the Order and/or in any applicable specification supplied by the Company to the Supplier or agreed in writing by the Company.
- 3.2 The Supplier shall comply with all applicable regulations or other legal requirements concerning the manufacture, packaging, packing and delivery of the Goods and/or Services.

### 4. DELIVERY

- 4.1 The Goods shall be delivered to and/or the Services shall be performed at the Delivery Address on the date or within the period specified in the Order, in either case during the Company’s usual business hours.
- 4.2. In the absence of any date being specified the Goods shall be delivered and/or the Services performed as soon as practicable or as soon as required by the Company.
- 4.3 Time shall be of the essence of the Contract.
- 4.4 Each delivery of Goods shall be accompanied by a delivery note from the Supplier showing the Order number, the date of the Order, the type and quantity of products included in the Order and, in the case of Goods being delivered by instalments, the outstanding balance of Goods remaining to be delivered.
- 4.5 If the Goods and/or Services are to be delivered or performed by instalments, the Contract will be treated as a single contract and not severable.
- 4.6 In the case of call off orders, the Supplier shall:
  - (a) Deliver each monthly call off within the first three (3) working days of each month (unless otherwise stated at time of order);
  - (b) At all times maintain a stock of one (1) month’s supply of the Goods as a buffer should the Company require this for urgent delivery;
  - (c) Rotate the buffer stock on a monthly basis, so that the buffer held in any given calendar month will be delivered as the call off in the following calendar month.

## **5. ACCEPTANCE AND DEFECTIVE PRODUCTS AND SERVICES**

- 5.1 The Company shall not be deemed to have accepted any Goods or Services until it has had a reasonable time to inspect them following delivery, or, in the case of a latent defect in the goods, until a reasonable time after the latent defect has become apparent.
- 5.2 If any of the Goods and/or Services delivered to the Company do not comply with clause 9 or are otherwise not in conformity with this agreement, then, without limiting any other right or remedy that the Company may have, the Company may reject those Goods and/or Services and:
- (a) require the Supplier to replace the rejected Goods and/or Services at the Supplier's risk and expense within 5 business days of being requested to do so; or
  - (b) Require the Supplier to repay the price of the Goods and/or Services in full (whether or not the Company has previously required the Supplier to replace the rejected Goods and/or Services); and
  - (c) Claim damages for any costs, expense or losses resulting from the Supplier's delivery of Goods and/or Services that are not in conformity with the terms of this agreement.
- 5.3 The Company shall not be obliged to return to the Supplier any packaging or packing materials for the Goods, whether or not the Goods are accepted by the Company.
- 5.4 If the Goods are not delivered or Services not performed on or by the due date then, without limiting any other right or remedy, the Company shall be entitled to:
- (a) Refuse to take any subsequent attempted delivery or performance of the Order;
  - (b) Terminate this agreement with immediate effect;
  - (c) Obtain substitute goods or Services from another supplier and recover from the Supplier any costs and expenses reasonably incurred by the Company in obtaining such substitute Goods or Services; and
  - (d) Claim damages for any other costs, expenses or losses resulting from the Supplier's failure to deliver the Goods or perform the Services by the due date.

## **6. RISK AND TITLE**

- 6.1 The risk in the Goods shall pass to the Company upon delivery in accordance with the Contract. Unless otherwise specified by the Company, delivery of the Goods and/or Services shall be effected by the Supplier at their own risk and expense (including the risk of deterioration in the Goods in the course of transit) at the place and on the date(s) specified in the Order.
- 6.2 Title to the Goods shall pass to the Company upon delivery, unless payment for the Goods has been made prior to delivery, when it shall pass to the Company once payment has been made and the Goods have been appropriated to the Contract.
- 6.3 All Goods rejected or returned shall be at the risk of the Supplier from 5 days from the date the Company gives notice of rejection or return of the Goods and, in any event, during transit back to the Supplier.
- 6.4 Unless otherwise agreed, the Supplier shall be responsible for collecting the rejected or returned Goods and all costs incurred in transporting them.

## **7. PRICE**

- 7.1 The Price shall be as stated in the Order and unless otherwise so stated shall be:
- (a) Exclusive of any applicable value added tax (which shall be payable by the Company subject to receipt of a VAT invoice);
  - (b) Inclusive of all charges for packaging, packing, shipping, carriage insurance and delivery of the Goods to the Delivery Address and any duties, imports or taxes other than value added tax.

## **8. PAYMENT**

- 8.1 The Supplier shall be entitled to invoice the Company for the Goods or Services on or at any time after delivery or performance and the invoice shall quote the Order number and delivery note number.
- 8.2 Unless otherwise stated in the Order, the Company shall pay the price of the Goods or Services within 60 days after the end of the month of receipt by the Company of a proper invoice or, if later, after acceptance of the Goods or Services by the Company.
- 8.3 The Company shall be entitled to set off against the Price any sums owed to the Company by the Supplier.
- 8.4 If the Company shall default in making payment on time, the Supplier shall be entitled to simple interest at the rate of 4% above the base rate of Barclays Bank. The time for payment shall not be of the essence.

## **9. QUALITY AND FITNESS FOR PURPOSE**

- 9.1 The Supplier shall manufacture, pack and supply the Goods in accordance with all generally accepted industry standards and practices that are applicable.

## 9.2 The Supplier warrants that:

- (a) The Goods shall be of satisfactory quality and free from defects in material or workmanship or design and remain so for 12 months after Delivery;
- (b) If the purpose for which the Goods are required is made known to the Supplier expressly or by implication, that the Goods shall be fit for that purpose;
- (c) The Goods shall conform to any specifications, drawings, descriptions and samples contained or referred to in the Contract and with all relevant British Standards and statutory requirements.
- d) Any Services performed under the Contract will be performed by appropriately qualified and trained personnel, with due care and diligence and to such a high standard of quality as it is reasonable to expect.

9.3 The Supplier shall ensure that the Goods are properly packed and secured in such a manner as to enable them to reach their destination in good condition

## 10. INSPECTION AND TESTING

- 10.1 If so required by the Company, the Supplier shall submit samples of the Goods for the Company's approval before the Goods are delivered.
- 10.2 The Company shall be entitled at any time during the manufacture, processing and storage prior to delivery (or any of them) of the Goods to inspect and test the Goods. The Supplier shall at its own cost provide or shall procure the provision of such facilities as may be reasonably required by the Company for such purpose.
- 10.3 If as a result of any inspection or test carried out pursuant to clause 10.2, the Company is of the reasonable opinion that the Goods do not comply with this agreement or are unlikely on completion of manufacture or processing to so comply, the Company may inform the Supplier accordingly and the Supplier shall take such steps as may be necessary to ensure such compliance.
- 10.4 Notwithstanding any testing or inspection carried out pursuant to this clause the Supplier shall remain fully responsible for the Goods and any such inspection or testing shall not diminish or otherwise affect the Supplier's obligations under this agreement

## 11. INDEMNITY AND INSURANCE

- 11.1 The Supplier will keep the Company indemnified against any claim in respect of loss or damage to any moveable or immovable property of any nature or type whatever of the Company or any third party and against any claim in respect of the death or personal injury to any person whether in contract or tort or otherwise arising under common law, statute or otherwise as a result of a breach of any statutory or common law duty or any act or omission on the part of the Supplier or any of its employees, sub-contractors, assignees or agents or as a result of the performance or non-performance of the Contract or otherwise howsoever arising wherever such loss, damage, death or personal injury occurs, and the Supplier shall also indemnify the Company in respect of any legal fees incurred in connection therewith on an indemnity basis.
- 11.2 The Supplier shall fully indemnify the Company against all loss, damages, costs or expense arising out of or connected with any breach of the Contract.
- 11.3 The Supplier shall maintain appropriate types and levels of insurance cover, including but not limited to Employer's Liability, Public Liability and Product Liability insurance. If the Supplier fails to take out and/or maintain any such insurance policies the Company may do so and recover the premiums paid from the Supplier as a debt. If so required, the Supplier shall promptly and accurately complete any insurance questionnaire supplied by the Company and the Company shall be entitled to withhold payment of the Price or part thereof until the questionnaire has been fully and accurately completed and returned to the Company.

## 12. CANCELLATION OR SUSPENSION

- 12.1 If the Company is for any reason beyond its reasonable control unable to accept delivery of the Goods at the times stated in the Purchase Order, or at all, then the Company may by notice in writing to the Supplier cancel or suspend the delivery of any of the undelivered Goods.
- 12.2 If delivery is suspended for more than 8 weeks, then either party may by notice in writing terminate the Contract forthwith.
- 12.3 Neither the Supplier nor the Company shall be liable to the other or deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the obligations in relation to the

Goods or services, if the delay or failure is beyond that party's reasonable control. Without prejudice to the foregoing, the following shall be regarded as causes beyond another's control:

- (a) Act of God, flood, drought, earthquake or other natural disaster;
- (b) Epidemic or pandemic;
- (c) Terrorist act, civil war, civil commotion or riots, war, threat of or preparation of war, armed conflict, imposition of sanctions, embargo or breaking off of diplomatic relations;
- (d) Nuclear, chemical or biological contamination or sonic boom;
- (e) Any law or action taken by a government or public authority including without limitation imposing an export or import restriction, quota or prohibition;
- (f) Collapse of buildings, fire, explosion or accident;
- (g) Any labour or trade dispute, strikes, industrial action or lockouts;
- (h) Interruption or failure of utility service.

### **13. TERMINATION**

13.1 Without prejudice to any other rights or remedies of the Company, the Company may by notice in writing terminate the Contract forthwith if the Supplier:

- (a) shall go into liquidation whether voluntary or otherwise (except for the purposes of and followed by an amalgamation or reconstruction) or shall become bankrupt or shall cease to trade or threaten to cease to trade or shall have a receiver or administrative receiver of the whole or any part of its assets appointed or shall enter into any composition or arrangement with or for the benefit of its creditors or shall be the subject of an administration order, or (b) shall be in breach of any terms of the Contract. The Supplier shall indemnify the Company for all losses suffered by it as a consequence of such termination.

13.2 The Company shall have the right to terminate the Contract by not less than one month's notice at any time without prejudice to the Company's rights and remedies in respect of any antecedent breaching of the Contract committed by the Supplier.

### **14. HAZARDOUS GOODS**

14.1 Hazardous Goods must be marked by the Supplier in accordance with the 'CLP' Regulation (EC) No 1272/2008. The Supplier shall observe the requirements of UK and international agreements relating to the packing, labelling and carriage of hazardous Goods.

14.2 All information held by, or reasonably available to, the Supplier regarding any potential hazards known or believed to exist in the transport, handling or use of the Goods supplied shall be promptly communicated to the Company.

### **15. DISPUTE RESOLUTION**

15.1 If a dispute arises out of or in connection with this agreement ("Dispute"), the parties shall follow the procedure set out in this clause:

- (a) Either party shall give to the other written notice of the Dispute, setting out its nature and full particulars ("Dispute Notice") together with relevant supporting documents. On service of the Dispute Notice, the Managing Director of the Supplier and the Managing Director of the Company shall attempt in good faith to resolve the Dispute;
- (b) If the respective Managing Directors of the Supplier and the Company are unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to arbitration.

15.2 The arbitrator shall be appointed by agreement between the Company and the Supplier or, failing agreement within 14 days of either of them requesting such agreement, by the president for the time being of the Chartered Institute of Arbitrators.

15.3 The procedure to be followed shall be agreed by the Company and the Supplier, or, in default of an agreement, be decided by the arbitrator.

15.4 If either the Company or the Supplier defaults in respect of any procedural order made by the arbitrator, the parties agree that the arbitrator shall have the power to proceed with the arbitration in the absence of that party and deliver his award. The parties agree that the decision of the arbitrator shall be final and binding on the Company and the Supplier and shall not be subject to appeal or judicial review.

### **16. INTELLECTUAL PROPERTY RIGHTS**

16.1 The Supplier will indemnify the Company against any claim for infringement of any patent, design right, registered design, unregistered design, trade mark or copyright or for breach of confidence by the use or sale of any article or material supplied by the Supplier to the Company and against all costs and damages,

including legal fees on an indemnity basis, which the Company may incur in any action for such infringement or for which the Company may become liable in any such action. Provided that this indemnity is conditional on the Company giving to the Supplier notice in writing of any claim being made or action threatened or brought against the Company and on the Company permitting the Supplier at the Supplier's own expense to conduct any litigation that may ensue and all negotiations for a settlement of the claim.

## **17. GENERAL**

- 17.1 The Contract shall not be assigned by the Supplier nor sub-let as a whole or in part without the Company's consent.
- 17.2 Any notice to be sent under the Contract should be sent to the address given on the Order and served personally or by pre-paid registered or recorded delivery letter. Letters shall be deemed served 48 hours after posting.
- 17.3 No delay or omission by the Company in exercising any of its rights or remedies under the Contract or under any applicable law on any occasion shall be deemed a waiver of, or bar to, the exercise of such right or remedy or any other right or remedy upon any other occasion.
- 17.4 A natural or legal person who is not a party to the Contract shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any terms of the Contract. This clause does not alter any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
- 17.5 The construction, validity and performance of the Contract shall be governed by the laws of England and Wales and the parties submit to the exclusive jurisdiction of the English Courts.
- 17.6 References to any statute or statutory provision shall be construed as a reference to that statute or provision as from time to time amended, consolidated, extended, re-enacted or replaced.
- 17.8 In the event that any provision of the Contract shall be void or unenforceable by reason of any provision of applicable law, it shall be deleted and the remaining provisions herein shall continue in full force and effect and, if necessary, be so amended as shall be necessary to give effect to the original intent of the Contract so far as possible.