

DAVID BALL GROUP STANDARD CONDITIONS OF SALE

1. DEFINITIONS

In these Conditions:

“Buyer” means the person agreeing to purchase the Goods from the Company.

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

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

“Contract” means the agreement between the Company and Buyer for the sale and purchase of the Goods in accordance with these conditions;

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

“Goods” means the goods to be supplied to the Buyer under the Contract as described in the relevant quotation, order acknowledgement, delivery note, advice note or invoice issued by the Company;

“Order” means the Buyer’s order for the Goods, as set out in the Company’s quotation, the Buyer’s written acceptance of the Company’s quotation, the Buyer’s purchase order form, and any other documents, or parts thereof as may be agreed by the parties. Should there be any inconsistency between the documents comprising the Contract, they shall have precedence in the order listed within this definition.

“Price” means the price of the Goods specified in the Order; “Specification” means any specification for the Goods, including any related plans and drawings that is agreed in writing by the Company and the Buyer.

2. BASIS OF CONTRACT

2.1 These Conditions apply to every contract between the Company and the Buyer to the exclusion of any other terms and conditions that the Buyer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. Any amendment or variation to these Conditions shall have no effect unless expressly agreed in writing and signed by a director of the Company.

2.2 The 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 and any applicable Specification are complete and accurate.

2.3 The Order shall only be deemed to be accepted when the Company issues a written acceptance of the Order, at which point the Contract shall come into force.

2.4 The Contract constitutes the entire agreement between the parties. The Buyer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Company which is not set out in the Contract.

2.5 Any samples, drawings, descriptive matter, or advertising produced by the Company and any descriptions or illustrations contained in the Company’s catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.

2.6 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 business days from its date of issue.

3. SAMPLING AND TESTING

3.2 THE ATTENTION OF THE BUYER IS SPECIFICALLY DRAWN TO THE NEED FOR CARE IN THE HANDLING OF ANY GOODS WHICH ARE IRRITANTS AND CAN CAUSE SKIN DISEASES, ALLERGIC REACTIONS AND BURNS. GUIDANCE IS GIVEN IN THE RELEVANT PRODUCT MATERIAL SAFETY

DATA SHEET (MSDS). The attention of the Buyer is drawn to the provisions of Section 6 of the Health and Safety at Work etc. Act 1974 (as amended) (the "Act").. The Company gives notice to the Buyer that the Company has available information (including chemical safety data sheets) and product literature concerning the conditions necessary to ensure that, as far as is reasonably practicable, the Goods supplied will be safe and without risks to health when properly used, handled, processed, stored or transported by a person at work. If the Buyer is not already in possession of such literature or requires any information or advice in connection with the safe use of the Goods at work the Buyer should immediately contact the Company.

3.3 The Buyer hereby undertakes pursuant to section 6(8) of the Act to take such measures as are communicated in writing to it and take such other steps as are sufficient to ensure, so far as is reasonably practicable, that the Goods will be safe and without risk to health at all times when they are being used, handled, processed, stored or transported by a person at work and shall not use them or permit them to be used without regard to any relevant information or advice relating to their use which has been communicated to the Buyer pursuant to these Conditions.

3.4 The Buyer shall indemnify and keep indemnified the Company in respect of any liability, monetary penalty or fine in respect of or in connection with the Goods incurred directly or indirectly by the Company under the Act or any regulation order or direction made thereunder or any other instrument relating to health and safety.

4. DELIVERY

4.1 The Buyer shall ensure that the Company has reasonable prior notice (being before 1pm on the day prior to required delivery) of the required time and date of delivery and, where the Goods are to be delivered, that the Company is given sufficient particulars of the Delivery Address. Failing agreement, delivery of the Goods shall be deemed to be at the Company's premises.

4.2 Where delivery of the Goods is to take place at the Company's premises, the Buyer must act in accordance with the operational procedures at the collection site and follow all instructions given by the Company's duly authorised representative.. The Company will not be liable for loss or damage to the Buyers property or, in the absence of negligence on the part of the Company, for any personal injury occasioned to the Buyer, its employees or agents which results from the failure of the Buyer to comply with the Company's site operational procedures or the Company's instructions. Neither shall the Company be liable, in any way, for loss or contamination to the Goods resulting from the condition of the collection vehicle.

4.3 Where the Goods are to be delivered by the Company to the Buyer then, time for the delivery shall not be of the essence and the Company shall have no liability in respect of late delivery of the Goods or any instalment thereof.

4.4 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.

4.5 The Buyer shall not be entitled to reject the Goods if the Company delivers up to and including 5% more or less than the total quantity of Goods ordered , or, where delivery is to be made by instalment, 5% more or less than the total quantity of Goods due to be delivered in each instalment. The Buyer shall accept such quantity of Goods and shall pay for the Goods actually delivered at the Contract rate. The Company's liability in respect of short weight or measure of Goods supplied shall be limited to the delivery of an additional supply of the Goods in accordance with these Conditions to make up the short weight or

measure. The Company shall have no liability in this respect if notification is given later than 72 hours after delivery of the Goods.

4.6 If the Buyer fails to take delivery of the Goods or fails to give the Company adequate delivery instructions in sufficient time for delivery to be effected (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Company's fault) then, without prejudice to any other right or remedy available to the Company, the Company may:-

- a. store the Goods until actual delivery and charge the Buyer for any reasonable costs incurred (including storage) or:-
- b. sell the Goods at the best price readily obtainable and (after deducting all reasonable storage, transport and sale expenses) charge the Buyer the shortfall below the contracted price.

5. RISK AND TITLE

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 any 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.

6. PRICE

6.1 The Price shall be as stated in the Order and unless otherwise so stated shall be:

1. exclusive of any applicable value added tax (which shall be payable by the Buyer subject to receipt of a VAT invoice);
2. exclusive of all costs and charges for packaging, packing, shipping, waiting time, carriage insurance and delivery of the Goods to the Delivery Address and any duties, imports or taxes which shall be invoiced to the Buyer.

6.2 The Company reserves the right to increase the price of the Goods at any time to reflect any increase in cost of the Goods due to:

1. any factor beyond the Company's control (including foreign exchange fluctuations, increases in labour, materials and other manufacturing costs);
2. any request by the Buyer to change the delivery date, quantities or types of Goods ordered, or the Specification; or
3. any delay caused by any instructions of the Buyer or failure of the Buyer to give the Supplier adequate or accurate information or instructions.

7. PAYMENT

7.1 The Company shall be entitled to invoice the Buyer for the Goods on or at any time after delivery and the invoice shall quote the number of the Order.

7.2 If the Goods are delivered in instalments, the Company shall be entitled to invoice the Customer as and when each instalment is ready for despatch, and payment shall be due in respect of each instalment as though the Goods therein comprised were the subject of a separate order, notwithstanding late delivery or non-delivery of other instalments.

7.3 The Buyer shall pay the price of the Goods in full and in cleared funds by the end of the month following the month of invoice date. Payment shall be made to the bank account nominated in writing by the Company. Time of payment is of the essence to the contract.

7.4 The Buyer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except where required by law).

7.5 If the Buyer fails to make any payment due to the Company under the Contract by the due date for payment, then the Buyer shall pay interest on the overdue amount at the rate of 4% per annum above Barclays Bank's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, until received as cleared funds into the Company's nominated bank account. The Buyer shall pay the interest together with the overdue amount.

8. QUALITY AND FITNESS FOR PURPOSE

8.1 The Company warrants that at the time of delivery, the Goods will:

- a. conform in all material respects with their description and any applicable Specification;
- b. be free from material defects in design, material and workmanship;
- c. be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).

8.2 Subject to clause 8.3, if:

- a. the Buyer gives notice in writing to the Company within a reasonable time of discovery that some or all of the Goods are 'Defective' and do not comply with the warranty set out in clause 8.1;
- 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.

8.3 The Company shall not be liable for the Goods' failure to comply with the warranty set out in clause 8.1 in any of the following events;

- a. the Buyer makes any further use of such Goods after giving notice in accordance with clause 8.2;
- 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/or maintenance of the Goods;
- c. the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions;
- d. the Goods differ from the Specification as a result of changes made by the Company to ensure that they comply with applicable statutory or regulatory requirements;
- e. in relation to cement bound materials, the Company will accept no responsibility for the strength or other quality of its Goods if the Buyer shall have added anything whatsoever to them (other than as directed by the Company)

8.4 Except as provided in this clause 8, the Company shall have no liability to the Buyer in respect of the Goods' failure to comply with the warranty set out in clause 8.1

8.5 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.

9 LIMITATION OF LIABILITY

9.1 The Company will under no circumstances whatever be liable to the Buyer, whether in contract, tort (including negligence), breach of statutory duty, otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and

9.2 The Company's total liability to the Buyer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed an amount equal to the price of the Goods.

10 FORCE MAJEURE

10.1 Neither the Company nor the Buyer 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, 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.

11 RECOMMENDED SHELF LIFE AND CONDITIONS FOR STORAGE

11.1 The Company shall use reasonable endeavours to deliver Goods to the Buyer as soon after the date of manufacture as possible and in any event before the expiry of the recommended shelf life.

11.2 The Company shall have no liability to the Buyer for the use of goods following the expiry of the recommended shelf life or if the Goods are not stored in the recommended conditions as notified by the Company to the Buyer.

12 DISPUTE RESOLUTION

12.1 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 Buyer and the Managing Director of the Company shall attempt in good faith to resolve the Dispute;
- b. if the respective Managing Directors of the Buyer 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.

12.2 The arbitrator shall be appointed by agreement between the Company and the Buyer 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.

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

12.4 If either the Company or the Buyer 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 Buyer and shall not be subject to appeal or judicial review.

13 TERMINATION AND SUSPENSION

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 Buyer: (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 Buyer 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 Company.

14 GENERAL

14.1 Assignment and other dealings:

- a. The Company 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 the Contract.
- b. the Buyer 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 the Contract without the prior written consent of the Company.

14.2 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.

14.3 No delay or omission by Buyer 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.

14.4 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.

14.5 The Contract shall be governed by the laws of England and Wales and the parties submit to the exclusive jurisdiction of the English Courts.

14.6 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.

14.7 No delay or omission by 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.

14.8 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 hereof shall continue in full force and effect and, if necessary, be so amended as shall be necessary to give effect to the spirit of the Contract so far as possible.

15 RETURNS

15.1 In circumstances whereby the buyer has over ordered or does not require the product anymore, the company accepts returns of product in a re-saleable condition.

15.2 The buyer must arrange the safe return of the product to the company.

15.3 Upon receipt of the product, the company will inspect and confirm acceptance.

15.4 A credit note less 20% restocking and administrative charges will be deducted prior to issuing the credit note.

15.5 Should the buyer wish the company to arrange collection of the product then the cost to do so will also be deducted prior to issuing the credit note.

