

terms and conditions of purchase

Broxap Limited ("the Company") CONDITIONS OF PURCHASE

TERMS AND CONDITIONS

- 1.1 Each order by the Company constitutes an offer to the person named in the order ("Supplier") in relation to the goods and/or services and at the price and upon the terms and conditions stated or referred to in it and these Conditions. Any commencement of work on the order or written acknowledgment (whether referring to conditions inconsistent with these Conditions unless clearly stated on its face to be a counteroffer) of the order may be treated by the Company as an unconditional acceptance of the order. The contract formed by such acceptance of the Company's order ("Contract") shall exclude any terms or conditions put forward by the Supplier or referred to in any negotiations or arising from any previous course of business
- 1.2 The Company shall not be liable for any order unless issued on the Company's official order form nor be bound by any variation or waiver or, addition to, these Conditions unless in writing signed by an authorised officer of the Company

PRICE AND PAYMENT

- 2.1 The prices payable for the goods and/or services ordered by the Company shall be the prices listed in the order
- 2.2 In the event that the Supplier shall seek to increase its prices, it shall give to the Company, not less than 60 days' notice in writing of its intention to implement such price increases
- 2.3 No variation or increase in the price may be made (whether on account of increased material, labour or transport costs, fluctuation in exchange rates or otherwise) without the prior consent of the Company in writing
- 2.4 The Company shall pay the price for the goods and/or the services on a 60-day net monthly account, following receipt by the Company of the Supplier's invoice, but time for payment shall not be of the essence of the Contract

DELIVERY AND PERFORMANCE

- 3.1 The Supplier agrees that all goods shall be delivered at the time (being of the essence) and in the quantities specified in the Contract, all charges paid, at the Supplier's risk, adequately packed and protected against damage and deterioration at the times and places instructed by the Company and all services will likewise be performed at the time (being of the essence) and correct locations as specified in the Contract. The Supplier shall, at the Company's request, promptly replace free of charge any goods damaged or lost in transit
- 3.2 The Supplier shall provide such manufacturing work programmes as the Company reasonably requires and keep the Company advised of the progress of the Contract and shall, in particular, immediately notify the Company of any apprehended delay in delivery or performance or the occurrence of any circumstances, including, but not limited to, breakdowns, labour dispute, or transportation difficulties, which might give rise to any such delay

WORKMANSHIP, MATERIALS AND DESIGN

- 4.1 The Supplier warrants as separate conditions of the Contract that all goods and, to the extent applicable, any services, shall
 - (a) be new and unused, (b) be free from defects in design, materials and workmanship, (c) be fit for their purpose, (d) comply with all specifications, drawings, samples or other descriptions furnished or specified by the Company, (e) be in accordance with all quality and other standards of the Company from time to time in force, (f) conform to all applicable codes of practice, British standards and manufacturer's recommendations from time to time in force, (g) comply with all other conditions or warranties express or implied under statute, common law or otherwise

RECEIPT AND INSPECTION

- 5.1 All goods and/or services are subject to inspection at the Company's premises. The Supplier shall also, at the Company's request, permit any persons designated by the Company to inspect any goods prior to delivery and shall ensure that, on delivery, the goods are accompanied by such certificates as to origin, quality or otherwise as the Company reasonably requires
- 5.2 Without prejudice to any other remedy, the Company shall be entitled to accept goods and/or services which are defective or otherwise not in accordance with the Contract and, at its discretion and at the Supplier's expense, carry out, have carried out or permit the Supplier to carry out any work which the Company considers necessary to conform the goods and/or services to the Contract
- 5.3 The carrying out or failure to carry out any inspection or checking or any approval given by or on behalf of the Company or payment for any goods and/or services shall not constitute acceptance of them or affect the Company's right to reject them

REJECTED GOODS AND SERVICES

- 6.1 Goods and/or services rejected by the Company shall be collected by the Supplier promptly upon notice of rejection being given by the Company and pending collection shall be held at the expense and risk of the Supplier who shall pay all expenses incurred by the Company in packing, handling and sorting rejected goods and/or services. If the Supplier fails to so collect the rejected goods within one (1) month of the date on which such notice of rejection is given the Company reserves the right, at its option, to dispose of the rejected goods in a manner it thinks fit without liability to the Supplier

TITLE

- 7.1 Title in all goods shall pass to the Company on delivery or, if earlier, on the allocation of the goods to the Contract

COMPANY'S PROPERTY

- 8.1 The Supplier shall, in respect of all goods, materials, tools, jigs, dyes, fixtures, moulds, gauges, patterns, plant or other equipment supplied by the Company to the Supplier or for which the Company is required to make any payment under the Contract ("Company's Property") (a) adequately insure the Company's Property, (b) use the Company's Property only in performance of the Contract and for no other purpose without the prior written consent of the Company, (c) not permit the Company's Property to be removed from the Supplier's premises designated in the Contract or to be confused with the property of any other person, (d) keep the Company's Property in good condition (fair wear and tear only excepted), (e) either immediately return the Company's Property to the Company or dispose of the Company's Property on completion of the Contract or earlier at the Company's request, (f) permit the Company or its representatives to enter the Supplier's premises at any reasonable time for the purpose of inspecting or repossessing the Company's Property
- 8.2 The Seller shall neither quote nor supply any goods and/or services (or any part of them) which have been made or created using or make use of the Company's Property to any third party without the Company's prior written consent
- 8.3 The Supplier will indemnify the Company in full against:
 - (a) loss or damage or injury caused to the Company's Property howsoever and whensoever arising;
 - (b) any wrongful or negligent act or omission on the part of the Supplier, its employees, representatives, agents, or sub-contractors in using the Company's Property or otherwise performing its obligations under these Conditions; and
 - (c) any loss, damage, liability, costs, or expense which the Company may suffer or incur by reason of any breach or breaches of any provision of this Condition 8

DESIGNS

- 9.1 All drawings, patterns, samples, specifications or other data prepared by the Supplier or made available by the Company in connection with the Contract ("drawings") and all rights therein shall be and remain the property of the Company which reserves the right to reproduce them or make them available to third parties. The Supplier shall treat all drawings as confidential and, in particular, not use them except for the purpose of the Contract or disclose them to any third party and shall immediately return to the Company any drawings made available or paid for by the Company, on completion of the contract or earlier on the Company's request, in good order and condition (fair wear and tear only excepted)

INNOVATIONS

- 10.1 The Supplier acknowledges that all rights in and title to any variation or addition to the drawings or any products produced therefrom shall be vested in the Company and the Supplier hereby assigns irrevocably and exclusively any rights it may have to such addition or variation or any altered or new product produced therefrom

ADMINISTRATION

- 11.1 The Supplier shall (a) ensure that all goods and/or services are accompanied by correct delivery notes, packing slips and customer acceptance forms (b) furnish invoices for each individual shipment, (c) provide by the fifth day of each month a statement of all invoices rendered during the previous month and (d) mark the Company's order number on all advice notes, invoices, statements and correspondence. Inattention to these details may result in delay in payment and where any advance or progress payments are made they are on account of the price stated in the Contract subject to satisfactory performance by the Supplier and are not deposits

INDEMNITY, INSURANCE AND THIRD-PARTY DISPUTES

- 12.1 The Supplier shall indemnify the Company against any loss, damage or injury to the Company, including any loss of or damage to any property (including any works), and shall also indemnify the Company against any claim in respect of loss, damage or injury made against the Company by any third party or parties including any loss of or damage to any property or injury to any person (including death) and any costs and expenses arising in connection therewith which in either case result from the Supplier's performance or purported performance of or failure to perform the Contract whether negligent or otherwise and, in particular, without limitation, which result from any defect of workmanship, materials or design (except only to the extent that the Company is responsible for design) affecting any goods and/or services

- 12.2 The Supplier shall at all times insure and keep itself insured with a reputable insurance company against all insurance liability arising under the Contract and shall, on request, provide the Company with evidence as to the existence and sufficiency of such insurance
- 12.3 Where under the terms of any guarantee or warranty given by it, the Company makes good, repairs, or replaces any goods and/or services supplied under the Contract the Company shall be entitled at its option to credit or compensation for or the making good, replacement or repair free of charge by the Supplier, without prejudice to any other rights of the Company including, without limitation, the reimbursement of any labour or other costs incurred by the Company
- 12.4 Without prejudice to the generality of condition 12.3, the Supplier shall promptly at its expense make good, replace or repair any goods and/or services which are or during the Relevant Period become defective by reason of faulty design, incorrect instructions or data as to use, inadequate or faulty materials or workmanship or any other breach of the Supplier's warranties, express or implied and for the purpose of this paragraph the Relevant Period, unless otherwise stated, shall be twelve (12) months from the date on which the goods and/or services are commissioned or eighteen (18) months from the date of their delivery, whichever is shorter, and in respect of any part or component which is replaced or repaired during such period shall be extended for a further twelve (12) months from the date on which such replacement or repair is effected
- 12.5 The Supplier shall provide all facilities, assistance and advice required by the Company or its insurers for the purpose of contesting or dealing with any action, claim or demand arising out of the Supplier's performance or purported performance or failure to perform the Contract and shall be bound by any award or judgment affecting the Company

TERMINATION AT OPTION OF THE COMPANY

- 13.1 Performance of work under any Contract may be terminated by the Company, at its option, in whole or in part, at any time by written notice to the Supplier notwithstanding the existence with respect to the Supplier of any force majeure circumstances as referred to in paragraph 15 below.
- 13.2 Upon the giving of any notice of termination the Supplier shall, unless otherwise directed by the Company:
 - 13.2.1 immediately terminate all work under the Contract and all Supplier's orders and subcontractors in connection therewith;
 - 13.2.2 settle all claims arising out of such termination of orders and sub-contracts;
 - 13.2.3 transfer title and deliver to the Company all completed work which conforms to the requirements of the Contract and does not exceed in quantity the amount authorised for production by the Company;
 - 13.2.4 take all actions necessary to protect property in the Supplier's possession in which the Company has or may require an interest; and
 - 13.2.5 submit to the Company promptly and in any event not later than thirty (30) days from the effective date of termination its termination claim, provided that in the event of failure by the Supplier to submit its claim within such period, the Company may determine, on the basis of the information then available to it, the amount, if any, due to the Supplier with respect to the termination and such determination shall be final and binding on the Supplier and the Company
- 13.3 Upon termination by the Company under this paragraph the Company shall pay the Supplier the following amounts and shall thereupon not be under any further or other liability in respect of goods and/or services in relation to which the Contract has been terminated:
 - 13.3.1 the Contract price for all goods and/or services which have been completed and delivered in accordance with the Contract and not previously paid for and which comply in all respects with the Contract; and
 - 13.3.2 the actual costs incurred by the Supplier in accordance with the Contract to the extent that such costs are reasonable to the amount and are properly allocable or apportionable to the termination portion of the Contract, including the actual cost of work in progress and materials delivered to the Company under paragraph 13.2 and including the actual cost of discharging the liabilities which are so allocable or apportionable; and the aggregate of payments under this paragraph 13.3 shall not exceed the aggregate price specified in the Contract for the goods and/or services the subject of the termination notice less payments otherwise made or to be made in respect of such goods and/or services
- 13.4 To the extent that the Company has made an advance payment to the Supplier pursuant to paragraph 2.4, such advance payment amount shall be deducted from any amount payable by the Company to the Supplier in respect of termination of the Contract (or any part thereof) pursuant to paragraph 13.3. If, and to the extent, the advance payment amount is greater than the aforementioned termination payment amount, the Supplier shall immediately refund to the Company an amount which is equal to the excess.
- 13.5 The provisions of this paragraph 13 shall not apply if the Contract is terminated by the Company pursuant to paragraph 14 below or otherwise howsoever
- 13.6 Goods and/or services that are supplied under a subscription, or term contract, shall be limited to the fixed period of 12 months from commencement and/or date of order. The Supplier accepts that this contract is renewable only at the written request and/or approval of the Company. The Company reserves the right to cancel the subscription of goods and/or services within the 12-month period, without charge to the Company, giving no more than 30 days' written notice to the Supplier.

TERMINATION FOR DEFAULT OF THE SUPPLIER

- 14.1 The Company may at its discretion, without prejudice to any other remedy, terminate or suspend its performance of the Contract in whole or in part by written notice to the Supplier at any time if the Supplier (a) fails to comply with any provision of the Contract or any other agreement with the Company (b) fails to make progress so as in the reasonable opinion of the Company to endanger the performance of the Contract, or (c) becomes insolvent, has a receiver or administrator appointed in respect of any of its assets or is compulsorily or voluntarily wound up or the Company bona fide believes that any of such events may occur. In case of such termination, the Company shall be discharged from all further liability in connection with the Contract, but such discharge shall not affect any accrued liabilities of the Company
- 14.2 No failure or delay by the Company to exercise its rights in respect of any default under the Contract by the Supplier shall prejudice the Company's rights in connection with the same or any subsequent default

FORCE MAJEURE

- 15.1 Neither party shall be responsible to the other by reason of failure to perform under any Contract arising from causes beyond the control of the party concerned including fire, explosion, breakdown, labour dispute or acts or omissions of any authority or governmental agency provided that the Supplier shall promptly notify the Company of the occurrence of any such circumstances and the Company shall be entitled to obtain elsewhere goods and/or services covered by the Contract for so long as such circumstances prevail and to reduce to that extent, without liability to the Supplier, its purchases under the Contract

INTELLECTUAL PROPERTY INDEMNITY

- 15.2 The Supplier shall indemnify the Purchaser against all actions, claims, demands, costs, charge and expenses incurred by the Company in connection with any infringement or alleged infringement in any country of the rights of any third party claimed under or in connection with any patent, registered design, trade mark, copyright, design right, breach of confidence or other industrial property right arising from the sale or use of any goods and/or services provided by the Supplier except only to the extent that such infringement results exclusively from a design or written instruction given by the Company and shall, at the Company's request, defend or assist in defending, at the Supplier's expense, any action against the Company or any person to whom the goods and/or services have been supplied

ASSIGNMENT AND SUB-CONTRACTING

- 16.1 The Supplier shall not without the prior written consent of the Company assign or subcontract any of its obligations under the Contract

HEALTH AND SAFETY AT WORK ETC

- 17.1 The Supplier undertakes that the goods and/or services and all packaging, instructions and labelling in connection with them shall comply in all respects with all statutes, regulations, byelaws, and standards in force at the date of delivery including the Health and Safety at Work etc Act 1974 and any safety precautions required for the handling or use of the goods shall be clearly marked on them

PUBLICITY

- 18.1 Neither the Contract nor the Company's name shall be used by the Supplier for advertisement purposes without the Company's prior written consent

CONSTRUCTION

- 19.1 The construction, validity and performance of the Contract shall be governed in all respects by English Law and the Supplier consents to the jurisdiction of the English courts in all matters relating to the Contract

NOTICES

- 20.1 Any notice to be given in writing under the Contract may be delivered by hand or forwarded by first class prepaid letter post to the receiving party at its business address as last notified in writing to the other party and shall be deemed to have been given on the date of the hand delivery or on the day following the posting