

# Terms and conditions of sale

Broxap Limited Terms and conditions of sale

1. **GENERAL**
  - 1.1 In these Conditions:
  - 1.1.1 The following expressions shall have the following meanings:
    - "Buyer" the individual firm company or other party from whom an Order to Supply Goods and/or provide Services is received by the Seller.
    - "Conditions" the standard terms and conditions of sale of the Seller as set out in these terms and includes any additional terms and conditions of sale agreed in Writing by the Seller.
    - "Contract" a contract for the Supply of Goods and/or provision of Services by the Seller to the Buyer whether made verbally or in Writing.
    - "Date of Delivery" the date on which delivery of the Goods or Services takes place pursuant to Condition 6.
    - "Goods" the goods, articles, or items which the Seller is to supply under the Contract.
    - "Hazards" any underground services, hazards, and impediments to reasonable digging conditions.
    - "Order" an order placed by the Buyer for the Supply of Goods and/or provision of Services whether verbally or in Writing.
    - "Seller" Broxap Limited or the trading division, subsidiary or holding company or associate of the company as notified to the Buyer in Writing.
    - "Services" the work, installation, maintenance, services, or any of them to be provided and where necessary delivered by the Seller pursuant to the Contract.
    - "Site" the premises or location nominated by the Buyer where Goods are to be delivered or Services provided by the Seller.
    - "Writing" includes facsimile transmission, electronic mail, and other comparable means of communication.
2. **ORDERS, ACKNOWLEDGMENTS, CONDITIONS AND VARIATIONS**
  - 2.1 Notwithstanding that the Seller may give a verbal quotation or estimate either verbally or in Writing no Order shall be binding on the Seller unless and until it has been acknowledged in Writing by the Seller.
  - 2.2 These Conditions are incorporated in the Contract and constitute the entire obligations between the Seller and the Buyer. In the case of any inconsistency between any letter or quotation incorporating or referring to these Conditions and any other, letter or form of contract sent by the Buyer to the Seller, whatever may be their respective dates, the provisions of these Conditions shall prevail.
  - 2.3 These Conditions apply to all the Seller's sales and any variation to these Conditions and any representations about the Goods and the Services shall have no effect unless expressly agreed in Writing by the Seller.
  3. **DESCRIPTION**
  - 3.1 The description of the Goods and/or Services shall be set out in the Seller's quotation.
  - 3.2 Any figures, statements, descriptions, illustrations, photographs, drawings, weights or any other matters contained in the Seller's catalogues, pamphlets, price lists, advertising literature or samples provided to and inspected by the Buyer shall be deemed to be accurate and are intended merely to represent a general picture and/or quality of the Seller's products and services and shall not form part of the Contract nor be regarded as a warranty or representation relating to the Goods, or a sale by sample.
  - 3.3 If the Buyer wishes to order Goods in accordance with a particular grade or specification this should be stated in the Buyer's Order and any accompanying drawings, patent, trade mark, registered design, copyright or any other proprietary right of any third party and the Buyer shall indemnify and keep the Seller indemnified in full against any loss, damage or expense (including costs) which the Seller may incur in or arising from the performance of the Contract by reason of any infringement of any such patent, trade mark, registered design, copyright or any other proprietary right and the Buyer acknowledges that the Seller shall be under no liability of any description to the Buyer if the Goods prove to be unsuitable for whatever reason for application or use.
  - 3.4 To the extent that the Seller has agreed in Writing to make patterns especially for the Buyer the same shall become the property of the Buyer when paid in full. Any replacements, alterations or repairs to any Buyer's patterns or equipment shall be paid for by the Buyer.
  - 3.5 The Seller shall have no responsibility for any loss of or damage to any patterns, equipment, or other items or the Seller's property which is on the Seller's premises arising from inadequate storage of any unauthorised, injurious act or default by any employee of the Seller or otherwise and the Buyer must arrange its own insurance at all times for such equipment.
  - 3.6 The Seller shall have a general lien on all the Buyer's property in the Seller's possession for all sums due at any time from the Buyer and shall be entitled to retain possession of such property until the sums due are paid as agent for and at the expense of the Buyer and apply the proceeds in and towards the payment of such sums on 28 days' notice in Writing to the Buyer. On account of this lien the Seller shall not be liable for the payment of any sums due to the Seller and the costs of sale or disposal, the Seller shall be discharged of any liability whatsoever in respect of the Buyer's property.
  4. **QUOTATIONS AND PRICE**
  - 4.1 The Seller's quotations are estimated and valid on the date of quotation and are provisional in so far as they are subject to alteration by reference to any changes in the price of raw materials, any item to be acquired by the Seller from a third party, or any other circumstances, or the conditions of the Site for the provision of the Services and any other circumstances beyond the Seller's control taking place between the date of the quotation and the Buyer's placing of an Order in respect thereof. For the avoidance of any doubt, prices are subject to correction in the event of errors or omissions.
  - 4.2 The Seller shall be entitled to adjust the Contract price of the Goods and/or Services in the event of any variation in the cost to the Seller of supplying the same or any part thereof caused by:
    - 5.2.1 any increase in the cost of materials or services required by the Seller for the completion of the Contract; or
    - 5.2.2 any increase in wages or production and manufacturing costs, taxes, duties and other overheads; or
    - 5.2.3 any other reason whatsoever beyond the control of the Seller including but not limited to the effect of exchange rate fluctuations and exchange rates between monetary currencies the action of any government or any other authority or any labour problems.
  - 4.3 The Seller shall be entitled to adjust the Contract price of the Goods and/or Services where the Buyer is the principal in the contract and the Seller becomes aware of facts or circumstances which give rise to the need for the Seller to supply additional Goods and/or Services which shall be dealt with in accordance with Condition 12.
  - 4.4 Unless otherwise stated, the price set out in the Seller's quotation shall be exclusive of any value added tax, insurance, packaging, cost of carriage to the contracted place of delivery, cost of off-loading and installation of the Goods or for the avoidance of doubt shall be at the Buyer's sole risk and expense) and any additional charges incurred by the Seller including but not being limited to congestion charges, parking charges, local authority charges and charges for site and plant hire.
  - 4.5 Samples submitted to the Buyer will be payable by the Buyer unless returned to the Seller, carriage paid, within 1 month from the date of despatch. In instances where the Seller is working from a new pattern or design, the Seller may either be required to approve the Buyer before manufacturing most of the Order which will only be commenced on receipt of such approval in Writing.
  - 4.6 The Seller's quotation assumes reasonable digging conditions for the installation of the Goods and the provision of the Services and assumes that there are no Hazards in the area to be excavated. The Seller reserves the right to carry out a Site survey at the expense of the Buyer upon the Buyer placing an Order and if the survey shows any Hazards the Seller shall advise the Buyer in writing of the nature of these and notify the Buyer of any additional charge payable to the Seller by the Buyer. The Seller's judgment of any Hazards is only a guide and the Buyer remains liable for the repair and/or movement of the Hazards.
5. The Buyer may request that the Seller carry out additional work to rectify any Hazards. The Seller is entitled to refuse such additional work. If the Seller accepts such additional work the Seller shall provide the Buyer with an estimate within 28 days of the Seller's acceptance of the work. The Seller provides it with a revised quotation. If the Buyer is unable to meet any additional cost quoted by the Seller, the Seller reserves the right to withdraw from the Site and to enforce payment for completion of the Services.
  - 5.8 The Seller's quotation assumes normal working hours of 8.00am to 6.00pm (excluding weekends) and the Seller reserves the right to increase the Contract price in the event that work outside of these hours is required.
  - 5.9 The Buyer warrants that all information applied to Seller is complete and accurate and the Seller reserves the right to amend the quotation and/or the Contract price or terminate the Contract in the event of any breach of this warranty.
  6. **DELIVERY**
  - 6.1 Delivery of Goods shall be deemed to be effected by the Seller, where Goods are delivered by the Seller, when the same arrive prior to unloading at the Site or at the nearest accessible road point to such Site, where Goods are delivered by an independent carrier, at the time of loading onto the carrier's vehicle, where Goods are collected by the Seller on behalf of the Buyer by its servants or agents, when the same are collected or in the case of Services shall be deemed to be delivered at the time of completion by the Seller of the Services.
  - 6.2 Whilst the Seller will make every reasonable effort to complete the Contract by the Date of Delivery such date or dates shall only constitute the times by which the Seller expects to effect such delivery and if no time is agreed delivery shall be deemed to be made at a later date but the time for performance of the Contract by the Seller shall not be of the essence of the Contract, the Seller's failure to so deliver and/or provide by the date or dates shall not constitute a breach of Contract and the Seller shall not in any circumstances be responsible for any direct or consequential loss or damage of any kind whatsoever.
  - 6.3 The Buyer shall ensure that, where Goods and/or Services are to be delivered to the Buyer, the Buyer is able to provide the Seller with adequate access to the place of delivery and sufficient unloading facilities are provided so that the Seller and/or its servants or agents may complete the delivery and perform the Services.
  - 6.4 Neither of the parties shall be responsible to the other for any delay in performance or non-performance due to any causes beyond the reasonable control of the parties, but the affected party shall promptly upon the occurrence of any such cause inform the other party in Writing, stating that such cause has delayed or prevented its performance under the Contract and thereafter such party shall take all action which is necessary to comply with the terms of the Contract as fully and promptly as possible.
  - 6.5 If the Buyer fails to take delivery of the Goods for any reason on the Date of Delivery, the Buyer shall pay the Seller for any re-delivery required by the Seller.
  - 6.6 The Supplier reserves the right to refuse to deliver the Goods outside the UK. Where the Goods are to be transported via sea transit the Seller and the Buyer agree that the Seller is not required to serve on the Buyer such notice as provided for in Section 10 of the Carriage of Goods by Sea Act 1924.
  - 6.7 All pallets, crates, wheels, and other packaging specified as returnable will be charged for and credited if not returned within 28 days. In the event of a dispute such packaging shall be deemed to have not been returned unless the Buyer is able to provide a signed acknowledgement of receipt by the Seller.
  7. **QUANTITIES AND INSTALLMENTS**
  - 7.1 Where Goods are delivered and/or Services are provided by instalments the Seller may refuse to deliver or provide any further instalments and the party in default in respect of any instalment shall be liable accordingly, but no default in respect of any instalment shall affect the performance of the Contract in respect of any other instalment.
  - 7.2 If Goods and/or Services are to be delivered in instalments, the Seller shall be entitled to invoice each instalment as and when delivery and/or provision is made and payment for all delivered and/or Services provided by instalments shall be due on the date of delivery and/or provision of each instalment or other default by the Seller. Failure by the Buyer to make payment by the due date for any one instalment for whatever reason shall constitute a breach of Contract and the Seller may terminate the Goods and/or provision of Services under the Contract but without prejudice to any other right the Buyer may have under any of the other provisions of these Conditions, in respect of such breach.
  - 7.3 The Contract shall be deemed to have been fulfilled by delivery of a quantity within 10% either way of the quantity ordered, and the Buyer shall pay the price of the Goods received.
  8. **SUSPENSION AND CANCELLATION**
  - 8.1 If the Buyer requires cancellation of the Contract this will only be accepted at the sole discretion of the Seller and unless otherwise agreed in Writing only upon condition that any costs, charges, or expenses (both direct and consequential) incurred by the Seller up to the date of cancellation and the value of all loss or damage (both direct and consequential) incurred by the Seller by reason of such cancellation will be reimbursed by the Buyer to the Seller forthwith. Acceptance by the Buyer of any cancellation by the Buyer will only be binding upon the Seller if it is made in Writing.
  - 8.2 The Seller shall suspend the performance of the Contract on receipt of a request in Writing from the Buyer for a period exceeding 30 days and exceeding 28 days and the Buyer shall reimburse the Seller for all storage charges and other additional costs the Seller incurs thereby, and such costs shall be due from the date of suspension up to the date of the Buyer's request to resume performance of the Contract. If the Buyer shall terminate the Contract and the rights and liabilities of the parties shall be the same as if the Contract had been cancelled in accordance with the provisions of Condition 8.1.
  9. **TERMS OF PAYMENT**
  - 9.1 Save where the Seller has otherwise agreed in Writing payment of the price of the Goods and/or Services is due 30 days from the date on which the Goods and/or Services are delivered or deemed to be delivered and the time for payment shall be of the essence.
  - 9.2 No payments shall be deemed to have been received until the Seller has received cleared funds. All payments payable to the Seller under the Contract shall become due and payable on the date of the Contract, despite any other provision.
  - 9.3 The Buyer shall not be entitled to withhold payment of any amount due to the Seller by reason of any disputed claim by the Buyer in connection with the Contract nor shall the Buyer be entitled to set off against any amount payable under the Contract to the Seller any amount which is not then due and payable by the Seller or for which the Seller disputes liability.
  - 9.4 If the Buyer fails to pay the Seller any sum due pursuant to the Contract the Buyer will be liable to pay interest to the Seller on such sum from the date of payment at the rate of 4% above the base lending rate of National Westminster Bank plc, accruing daily until payment is made, whether before or after any judgment. The Seller is also entitled, at its discretion, to levy an additional charge which may be incurred by the Seller as a result of the Buyer failing to pay the Seller.
  - 9.5 The Seller may suspend or close the credit account with the Buyer immediately if the Buyer fails to comply with the terms and conditions relating to its credit account or if the Buyer fails to pay the Seller any sum due or all or part of its credit account with a cheque and the cheque is dishonoured, the Seller reserves the right to debit the Buyer's credit account with any charge levied by the Seller's bankers and/or any other third party in respect to the handling of the dishonoured cheque.
  - 9.7 Where the Seller agrees for the Buyer to pay for the Goods and/or Services by instalments, any delay or default in making payment of one (or more) instalment(s), will render all remaining instalments due and payable together with interest in accordance with Conditions 9.4.
  10. **INSTALLATION, MAINTENANCE AND/OR PROVISION OF SERVICES**
  - 10.1 When the Contract includes provision of Services by the Seller, the Seller will supply all necessary personnel and tools for the provision of the Services according to the details specified by the Buyer in the Contract.
  - 10.2 Where Services are to be provided under Condition 10.1, unless otherwise agreed the Buyer will be responsible for (as appropriate):
    - 10.2.1 all necessary preparation of the Site including, but not being limited to, all work which is necessary to ensure that the Seller is able to access the proper unloading, safe-keeping and insurance of the Goods from the time of delivery;
    - 10.2.2 the provision of scaffolding, lifting and any other equipment (excluding tools) to allow or assist the Seller to provide the Services;
    - 10.2.3 any other matter which is included in the Seller's quotation but required to enable the Seller to provide the Services;
    - 10.2.4 giving the Seller access to and possession of the Site at such time and in such state as may enable it to complete the provision of the Services other than that which would be provided by the Seller should the Site be the removal of all debris and surplus materials from the Site at its sole cost and expense.
  - 10.3 The Buyer acknowledges that the Seller may not be able to perform the Services unless the Seller has access to the Site in accordance with Condition 10.2. If the Buyer fails to provide any or any of the items referred to in Condition 10.2 which the Seller reasonably requires them to or its reasonable satisfaction, then the Seller may in its discretion and at its sole discretion, terminate the Contract in respect of such items or items as it may require and charge such expense as may be incurred in providing such item or items to the Buyer or invoke the provisions of Condition 10.4 below.
  - 10.4 The Buyer acknowledges that the ability of the Seller to provide the Services is of primary importance to the Seller. In view of the difficulty of carrying out the Seller's obligations under the Contract, the Seller shall be unable to provide the Services at the time and/or on the dates agreed between the parties due to the failure of the Buyer to comply with any of its obligations under Condition 10.2, the parties have attempted to
11. provide a genuine pre-estimate of the loss the Seller would suffer. Without prejudice to any other right or remedy the Seller may have for failure by the Buyer to take delivery of the Services under the Contract the Buyer agrees to pay to the Seller a sum to be determined by the Seller acting reasonably and with reference to standard rates charged for the provision of Services under the Contract and to the cost of the Seller's compensation for each day or part of a day by which the Seller is prevented from providing the Services subject to a maximum of the Contract price.
  - BUYER'S WARRANTIES**
  - 11.1 The Buyer warrants that:
    - 11.1.1 where the Goods are to be installed and/or the Services are to be performed in or at the premises of any third party it has full and proper authority from that third party to enter the Site to install the Goods and/or perform the Services and undertakes with the Seller to inform it forthwith in the event of any suspension or termination of that authority;
    - 11.1.2 the installation of the Goods and/or the provision of the Services will not infringe any statutory provisions, for the avoidance of doubt including, but not limited to, relevant Highways legislation and will not infringe any third party rights;
    - 11.1.3 it has obtained all relevant licences and consents to allow for the Seller to perform the Services and it has complied with all requirements applicable to the Goods;
    - 11.1.4 it has carried out a full inspection of the areas on which the Seller is performing the Services and has arranged for the preparation where appropriate of all necessary risk assessments, method statements and relevant drawings, including, but not limited to, underground service drawings;
    - 11.1.5 it has taken all reasonable precautions to procure that all areas on which the Seller is performing the Services are safe and without risk to health;
    - 11.1.6 it has made such enquiries as are reasonable to ensure that all areas on which the Seller is performing the Services are free from latent defects and agrees to fully indemnify the Seller against all and any claims which arise from any subsequent discovery of a latent defect on such area;
    - 11.1.7 it will enable the Seller to deliver the Goods and/or perform the Services in accordance with the Contract and to have the essence in this regard; the Goods are sufficiently suitable and fit for the purposes which the Buyer intends;
    - 11.1.8 the installation, use and operation of the Goods comply, both before and after installation, with all applicable statutory provisions, regulations including but not being limited to health and safety legislation;
    - 11.1.9 Where the Buyer provides any piece or pieces of equipment for the installation and/or operation of the goods or which is ancillary to and/or used in connection with the Goods, such equipment shall be of good quality and fit for purpose and does not adversely affect the suitability or fitness for purpose of any additional goods supplied and installed.
    - 11.1.10 It will comply and has complied with all applicable anti-slaavery and human trafficking laws and regulations from time to time in force including but not limited to the Modern Slavery Act 2015;
    - 11.1.11 The Buyer shall indemnify and hold the Seller and its officers, directors, employees, and agents harmless against any claims, demands, liabilities, interest loss or damages (including reasonable legal costs) arising from any misrepresentation and/or breach by the Buyer of the warranties contained in Condition 11.1; and
    - 11.1.2 Without prejudice to the foregoing any breach by the Buyer of any of these Conditions.
  12. **ADDITIONAL GOODS/SERVICES**
  - 12.1 Where the Buyer requires Goods and/or Services to be provided in addition to those set out in the Contract but as a part of the Contract, the Seller may accept such additional Goods and/or Services if notified in Writing by the Seller of such Order or the provisions of these Conditions shall apply to those additional Goods and/or Services.
  13. **BUYER'S WARRANTY**
  - 13.1 Subject to any warranty stated in the Order the Seller shall make good by replacement or, at its option, repair any failure (far wear and tear excepted) in the Goods and/or Services which, under conditions of proper use and maintenance, are defective in design, workmanship, manufacture, design, materials, or workmanship and which appears not later than 12 months after the Date of Delivery or after the date on which the provisions of the Contract apply to the Goods and/or Services.
  - 13.2 Notwithstanding the provisions of Condition 13.1, in the case of a claim falling within Condition 13.1, the Seller reserves the right at its sole discretion to credit the Buyer in full the price paid by the Buyer to the Seller.
  - 13.3 In those circumstances where the Seller elects to provide a refund to debit any credit account of the Buyer pursuant to Condition 13.2, the Buyer hereby acknowledges and agrees that unless otherwise agreed in Writing by the Seller, the Seller shall be solely responsible for the safe removal (including any deinstallation) and disposal of any defective Goods and/or goods provided as part of the Services (including any and all costs and charges associated therewith) and undertakes that it shall comply with the written or oral instructions given by the Seller from time to time in regard to (if there are none) any relevant laws and good trade practice. The Buyer shall make good any damage caused by the Seller or any third party to the Seller's premises or other property or disposal of defective Goods and/or goods provided as part of the Services and shall indemnify and keep indemnified the Seller against all liabilities and expenses incurred by the Seller in connection with the Seller arising out of or in connection with such removal and/or disposal.
  - 13.4 The Seller's liability under this Condition shall automatically cease if:
    - 13.4.1 the Buyer has not paid for all goods supplied and/or
    - 13.4.2 the Buyer has not paid for all Services provided under the Contract or if the Seller arising out of or in connection with such removal and/or disposal.
  - 13.5 The Seller or its servants or agents are denied full and free right of access to the Seller's premises for the purpose of inspecting the Goods which has not properly kept, used and maintained the Goods strictly in accordance with the manufacturer's or the Seller's instructions (if any); or the defect or failure is caused by willful damage, interference, dirt, neglect, misuse or other cause; or the Goods are used in a manner or use after the defect has become apparent; or the defect or failure is caused by defective maintenance or incorrect installation of the Goods by any agent or contractor of the Buyer; or the defect or failure is caused by wear and tear; or
  - 13.6 the Buyer has failed to notify the Seller in Writing of any loss, defect or suspected defect within 3 days of the Date of Delivery; or
  - 13.7 if such defect or failure arises as a result of any inaccurate or incomplete information or details supplied by the Buyer or in any defect or incomplete information or details supplied by the Seller; or
  - 13.8 the Buyer has modified the Goods in any way.
  - 13.9 The warranty set out in Condition 13.1 shall be in lieu of any warranties (other than those set out in this Condition) which the Seller, its agents, common law or otherwise heretofore which warranties, conditions and undertakings are hereby expressly excluded, except that such exclusions will not apply to the extent that the Seller or its servants or agents or any implied condition that the Seller has or will have the right to sell the Goods when the property is to pass; or
  - 13.10 when the Buyer deals as a consumer (as defined in section 12 Unfair Contract Terms Act 1977) in which case the Seller's liability in respect of the goods with their description or sample or as to their quality of fitness for a particular purpose.
  - 13.11 The Seller's responsibility is limited to the terms of the foregoing and shall not be taken to constitute an admission of liability or an acknowledgment of negligence of the Seller, its servants or agents) the Seller shall not be liable for any claim for direct or indirect consequential or incidental loss, injury, expense or damage of any kind whatsoever or however caused (including but not limited to loss of profit) made by the Buyer or any third party against the Seller arising out of or in connection with any defect in the Goods and/or Services whether or not such defect is directly or indirectly wholly or in part caused by the act, omission, default or negligence of the Seller, its servants or agents whether or not such defect amounts to a breach of fundamental term or a primary obligation of the Contract or a fundamental breach thereof.
  - 13.12 Subject to clause 13.6, the Seller's total liability to the Buyer in respect of all losses (insofar as they are not excluded pursuant to clause 13.6) 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 the price paid for the Goods and/or Services to which the Contract relates.
  - 13.13 Any Goods that are designed for access control purposes are designed to deter unauthorised access. For the avoidance of any doubt, the Seller gives no warranty that the Goods or installation thereof will prevent unauthorised access and the Seller shall not be liable for any loss or damage however arising as a result of unauthorised access to the Buyer's property by any third party whether a trespasser or otherwise or in connection with such unauthorised access.
  - 13.14 The Buyer acknowledges and agrees that some goods supplied by the Seller which are made of wood have been machine finished and pressure treated for long life. As a result, the wood has a moisture content which will cause it to shrink and expand as a result of changes in air, sun and earth, will periodically shrink and expand and cause stress cracks in line with the grain. The Seller guarantees that any pressure treated wood which is used in its long life warranty within 10 years of the Date of Delivery will be defect free to the Seller at the Buyer's own cost.
  - 13.15 The Seller does not warrant that any two items supplied by it will be identical in colour and the Seller acknowledges that it shall have no recourse against the Seller in this regard unless the difference in colour (when originally stated to be the same by the Seller) is material.
14. **GOODS AND MATERIALS MANUFACTURED BY THIRD PARTIES**
  - 14.1 Where the Goods which are the subject of the Contract are not manufactured by the Seller and are delivered direct to the Buyer or collected by or on behalf of the Buyer from the manufacturer or other third party the Seller shall not be liable for any loss or damage to such Goods whatsoever or whenever occurring.
15. **TITLE TO GOODS**
  - 15.1 Until payment in full of all monies due and owing by the Buyer to the Seller on any account whatsoever, the Seller shall retain full and beneficial ownership of the Goods as being acquired, sold, or otherwise transferred to the Seller in the same shall pass to the Buyer at the time of delivery.
  - 15.2 Until title to the Goods has passed from the Seller to the Buyer, the Buyer shall:
    - 15.2.1 Store the Goods separately from all other goods held by the Buyer so that they remain readily identifiable as the Seller's property;
    - 15.2.2 preserve, identify, mark and insure the Goods and keep the Goods so that they clearly identify them as belonging to the Seller;
    - 15.2.3 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
    - 15.2.4 notify the Seller immediately if it becomes subject to any of the events listed in clause 15.5; and
    - 15.2.5 give the Seller such information relating to the Goods as the Seller may require from time to time.
  - 15.3 Subject to Conditions 15.4 and 15.5, the Buyer shall be at liberty to sell the Goods supplied in trust to pay to the Seller such sums to which it is entitled under the provisions of the Contract provided that the sums due to the Seller shall be kept separate from any monies of the Buyer and/or any third party any sale shall be effected in the ordinary course of the Buyer's business at full market value, and any such sale shall be a sale of the Seller's property on the Buyer's credit and shall not constitute a discharge of the Buyer's obligations under the Contract. Notwithstanding the provisions of this Condition 15.3, the Buyer may retain from the proceeds of such sale any sum in excess of the sum or sums to which the Seller is entitled under the Contract or any other Contract between the Seller and the Buyer.
  - 15.4 The Seller may at any time revoke the Buyer's conditional power of sale contained in Condition 15.3 by giving 24 hours prior notice in Writing of such revocation and without prejudice to the Buyer being in default for longer than 14 days in the payment of any sum whatsoever due to the Seller from the Buyer (whether in respect of the Goods and/or Services which are the subject of the Contract or in respect of any other Contract between the Seller and the Buyer) if the Seller has bona fide doubts as to the solvency of the Buyer.
  - 15.5 The Buyer's right of possession of the Goods and conditional power of sale contained in Condition 15.3 shall automatically cease if:
    - 15.5.1 the Seller or its servants or agents or any person acting as a receiver or administrative receiver is appointed over the whole or any part of the assets or the undertaking of the Buyer or a winding up order is made against the Buyer or the Buyer goes into voluntary liquidation (except solely for the purpose of reconstruction or reorganisation) or calls a meeting or makes any arrangement with its creditors or becomes subject to an administration order or commits any act of bankruptcy; or
    - 15.5.2 the Buyer pledges or in any way charges by way of security for indebtedness the whole or any part of the Goods;
    - 15.5.3 Should the Contract require the installation of the Goods at or in the premises of any third party, the Buyer shall notify the third party before installation begins of the terms of this Condition 15.5 and obtain the acknowledgement in Writing of the third party of the terms of this Condition 15.5 and the third party has noted the terms of this Condition 15.5 and concedes the rights of the Seller under it as if the Contract was made by the third party directly with the Seller.
  - 15.6 The Seller will have the right to maintain an action against the Buyer for the price of the Goods notwithstanding that property in the Goods has not passed.
  - 15.7 The Seller grants the Seller, its agents, and employees an irrevocable licence at any time to enter the premises where the Goods are or may be stored with or without vehicles in order to recover them, where the Buyer's right to possession has terminated on the termination of the Contract, however caused, and the Seller (but not the Buyer's) rights contained in this Condition 15.1 shall remain in effect.
16. **RISK AND INSURANCE**
  - 16.1 The risk in the Goods and Services shall pass to the Buyer at the time of delivery of the Goods in accordance with Condition 6. The Seller shall be deemed to be delivered at the time of completion by the Seller of the Services.
  - 16.2 Notwithstanding the reservation of title contained in Condition 15, the Buyer shall insure the Goods and/or any products made wholly or partly therefrom against all risks under a policy of insurance covering the full amount of the price payable under the Contract with an insurance office of repute from the time of delivery of the Goods until the date title in the Goods passes to the Buyer. The Buyer shall be deemed to be in breach of this obligation if the Seller has taken place and procure that the interest of the Seller as the owner of the Goods and/or performer of the Services is noted on the policy of such insurance and produce such policy to the Seller for inspection on demand.
  - 16.3 **HEALTH AND SAFETY AT WORK (ETC) ACT 1974**
  - 16.4 The attention of the Buyer is drawn to the provisions of section 8 of the Health and Safety at Work (Etc) Act 1974 which will make available upon request information on the design, construction, and installation of its products to ensure that, as far as is reasonably practicable, they are safe and without risk to health or safety. The Seller reserves the right to take such steps as are necessary to ensure that such information relevant to the Goods and/or the Services which is appropriate is made available to its servants, agents, or any person to whom the Seller supplies them and to any other person to whom the Buyer reasonably requests such information should be given.
  - 16.5 **FORCE MAJEURE**
  - 16.6 The Seller reserves the right to defer the date of delivery or to cancel the Contract or to reduce the volume of the Goods ordered by the Buyer (whether or not the Seller is in breach of the Contract) in the event of the carrying on of its business due to circumstances beyond the reasonable control of the Seller including, without limitation, acts of God, governmental actions, war or nuclear or other emergency, epidemic, pestilence, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes, provided that, if the event in question continues for a continuous period in excess of 60 days, the Buyer shall be entitled to give notice in Writing to the Seller to terminate the Contract.
  - 16.7 **TERMINATION**
  - 16.8 Without prejudice to any other rights or remedies which the parties may have, the Seller may at its option terminate the Contract and/or suspend the performance of the Contract if:
    - 16.8.1 the Buyer commits a breach of any of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of being notified in writing of the breach;
    - 16.8.2 the Buyer commits a breach of any of the terms of any other contract between the Buyer and the Seller (or any number of the Seller's group of companies) and (if such breach is remediable) fails to remedy that breach within 30 days of being notified in writing of the breach;
    - 16.8.3 the Buyer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits liability to pay its debts; or
    - 16.8.4 the Buyer has a bankruptcy order made against him or makes an arrangement or composition with its creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a company) convenes a meeting of creditors (whether for reconstruction or administrative receivership or otherwise) or passes a resolution or administrative receivership or enters into any arrangement or composition) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, liquidator or administrative receiver appointed over it or the carrying on of any part thereof is prohibited or restricted by the court or the appointment of an administrator of the Buyer or notice of intention to appoint an administrator is given by the Buyer or its directors, or a resolution is passed or a petition presented to any court for winding up of the Buyer or for the granting of an administration order in respect of the Buyer or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer; or
    - 16.8.5 the Buyer ceases to trade or threatens to cease to trade for any business.
  - 16.9 There is a change of control of the other party (within the meaning of section 1124 of the Corporation Tax Act 2010).
17. **GENERAL**
  - 17.1 If at any time any one or more of the provisions or part thereof of these Conditions becomes or becomes incapable of being enforced in any respect under any law or held by a court to be invalid, illegal, or unenforceable, the validity and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.
  - 17.2 These Conditions and each and every Contract made pursuant to them shall be governed by and construed in all respects in accordance with the laws of England and the Seller and the Buyer hereby agree to submit to the non-exclusive jurisdiction of the courts of England and Wales.
  - 17.3 Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may be notified in writing to the other party in writing pursuant to this provision to the party giving the notice. Notices shall be deemed to have been received:
    - 20.1 if delivered by hand on the day of delivery; or
    - 20.2 if sent by fax, on a working day prior to 4.00pm, at the time of transmission and otherwise on the next working day.
  - 17.4 No waiver by the Seller of any breach or any provision of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision and the Seller shall not be prejudiced by any forbearance or indulgence granted by it to the Buyer.
  - 17.5 The Seller shall be deemed to be in breach of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
  - 17.6 The Seller may assign the Contract or any part of it to any person, firm or company. The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Seller.
  - 17.7 The Seller reserves the right to subcontract any part of the Order or Contract.
  - 17.8 The Buyer acknowledges and agrees that details of the Buyer's name, address and payment details will be submitted to a credit reference agency and personal data will be processed by and on behalf of the Seller.
  - 17.9 Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor shall any of the parties be deemed to be in partnership for any purpose. No party shall have authority to act as agent, for or bind, the other party in any way.
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# 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 Where applicable, 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