

Turbine Broxap Limited - Terms and conditions of sale

TBXT&CoS/BJ/V1/22JAN2025

1. **GENERAL**

11 In these Conditions:

11.1 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 Services is received by the Seller.

"Conditions" the standard terms of the Contract 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 to the Buyer by the Seller and the Seller.

"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 verbal or in Writing.

"Seller" Broxap Limited or the trading division, subsidiary or holding company or associate as certified to the Buyer in Writing.

"Services" the work, installation, maintenance, services, or any of them to be provided and 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 have given a detailed 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 contain 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 Order, 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 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 accepted by the Buyer are not to be taken into account 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 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, but the Seller reserves the right at any time without notice to the Buyer to change or modify the particulars of any materials, description, design, drawing, illustration and/or particulars of any goods or materials used in their manufacture and to supply the Goods as so modified or substitute similar goods of equivalent type.

3.4 The Seller gives no representations as to the condition of the Goods, their fitness for purpose or the measurements or specification of any Goods unless it is confirmed in Writing by the Seller.

4. **DESIGNS, BUYER'S PROPERTY AND INTELLECTUAL PROPERTY**

4.1 No right of ownership or interest in the Seller's patents, registered designs, trademarks, copyrights, or any other intellectual property owned by the Seller shall pass in any way to the Buyer in relation to the Goods or Services provided under the Contract. The Seller gives no warranties or representations in relation to the Seller's patents, registered designs, trademarks, copyrights, or any other intellectual property and does not warrant or represent that any registered patents, registered designs, trademarks, copyrights, or any other intellectual property are valid or will remain registered.

4.2 Where Goods are made or supplied to the Buyer's own specification, pattern or design or where the Seller is aware of the Seller's design or pattern in accordance with the Buyer's instructions the Seller warrants and undertakes full responsibility not only for the suitability and fitness of the specification, pattern or design but also that such specification, pattern or design does not infringe any patent, trademark, copyright, or any other intellectual property 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 whatsoever including costs of any proceedings which may incur in or result from the performance of the contract by reason of any infringement of any such patent, trademark, registered design, copyright or any other proprietary right and the Buyer acknowledges that the Seller shall be under no liability to defend or indemnify the Seller in respect of the Goods provided to be unusable for whatever reason for application or use.

4.3 To the extent that the Seller has agreed in Writing to make patents especially for the Buyer the same shall become the property of the Buyer and the Seller shall be liable for any replacement or to any Buyer's patents or equipment shall be paid for by the Buyer.

4.4 The Seller shall have no responsibility for any loss of or damage to any equipment, or other items of the Buyer's property whilst on the Seller's premises arising from fire, theft, or any other cause, whether by accident or default by any employee of the Seller or otherwise and the Buyer must arrange its own insurance at all times for such equipment.

4.5 The Seller shall have a general lien on all the Buyer's property in the Seller's possession or control and the Seller shall be entitled to retain possession of, use, sell or dispose of such property as agent for and at the expense of the Buyer and apply the proceeds in and towards the payment of such sums not guaranteed by the Seller to the Buyer. On account to the Buyer for any balance remaining after 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.

5. **QUOTATIONS AND PRICE**

5.1 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 the changes in the price of raw materials, any tax to be added or by the Seller from a third party, rates of wages, other costs of production, the conditions of the Site for the provision of the Services and any other circumstances beyond the Seller's control which may affect the price 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.

5.2 The Seller shall be entitled to adjust the Contract price of the Goods and/or Services whether before or after the making of the Contract 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 reasons whatsoever beyond the control of the Seller including but not without prejudice to the generality of the foregoing) fluctuations in exchange rates between monetary currencies the action of any government or any other authority or any labour problems.

5.3 The Seller shall be entitled to adjust the Contract price of the Goods and/or Services whether before or after the making of the Contract if 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.

5.4 Unless otherwise stated, the price set out in the Seller's quotation shall exclude 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 (which for the purposes of this Condition shall include the cost of any 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 skip hire.

5.5 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 order, the Seller may submit samples for approval by the Buyer before manufacturing most of the Order which will only be commenced on receipt of such approval in Writing.

5.6 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 the Seller shall be entitled to amend the Seller's quotation in Writing in the event 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 of 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 which the Buyer acknowledges may alter once the Seller provides it with a revised quotation. If the Buyer is unable to meet the costs) quoted by the Seller, the Seller reserves the right to withdraw from the Site and to enforce payment of the Seller's quotation.

5.7 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 if work outside of these hours is required.

5.8 The Buyer warrants that all information provided to the 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, (a) 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, (b) where Goods are delivered by the Seller's servants or agents, when the same are loaded on the carrier's vehicle, (c) where Goods are collected by or on behalf of the Buyer by its servants or agents, when the same are collected or (d) 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 estimated date of delivery as notified to the Buyer by the Seller and to the Seller's acknowledgement of the Order, such date or dates shall only constitute the time by which the Seller expects to effect such delivery and if no time is agreed delivery and/or provision will be within a reasonable time 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 due date(s) 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 by the Seller and/or its servants or agents, full and adequate access to the place of delivery and suitable unloading facilities are provided and the Seller and 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 Seller and the Seller shall not be liable for any delay in performance of any such cause so 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 within its power to comply with the terms of the Contract and to fulfil its obligations thereunder.

6.5 If the Buyer fails to take delivery of the Goods for any reason, the Buyer shall pay the Seller for any re-delivery required by the Buyer.

6.6 The Seller reserves the right to refuse to deliver the Goods outside the UK. Where the Goods are to be delivered outside the UK, the Seller shall not be liable for any misrepresentation and/or breach by the Buyer of the warranties contained in Condition 11; and/or

6.7 All pallets, crates, wheels, and other packaging specified as returnable will be charged for and returned to the Seller 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 INSTALMENTS**

7.1 Where Goods are delivered and/or Services are provided by instalments each instalment shall be deemed to be sold under a separate Contract and the party in default in respect of any instalment shall be liable accordingly, but no default in respect of any one instalment shall affect due performance of the Contract as regards other instalments.

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 notwithstanding non-delivery and/or non-provision of other instalments or other default by the Buyer. In the event of a dispute the Buyer shall be deemed to have not been returned unless the Buyer is able to provide a signed acknowledgement of receipt by the Seller.

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 as a result of such cancellation will be reimbursed by the Buyer to the Seller forthwith. Acceptance by the Seller 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 but shall only do so for a period not exceeding 28 days and the Buyer shall reimburse the Seller for all storage charges and other additional costs the Seller incurs thereby, and such charges shall be added to the Seller's invoice. If the Buyer fails to pay such suspension shall continue for a period of more than 28 days, then the Seller may 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 10. The Seller shall be entitled to extend the period of its obligations under the Contract shall be extended for a period equal to any period of suspension in accordance with this Condition 8.2.

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 immediately on termination of this Contract despite any other provision.

9.3 The Seller shall not be entitled to withhold payment of any amount due to the Buyer by reason of any disputed claim by the Buyer in connection with the Contract nor shall the Seller be entitled to suspend or withhold payment 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 by the due date the Seller shall be entitled to charge interest on the sum from the due date for payment at the annual 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 to levy an additional charge which may be incurred by the Seller because of the Seller pursuing the Buyer for payment.

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.

9.6 If the Buyer pays 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 incurred 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) instalments, will render all remaining instalments due immediately and payable together with interest as calculated with Condition 9.4.

10. **INSTALLATION, MAINTENANCE AND/OR PROVISION OF SERVICES**

10.1 The Contract includes provision of the Services by the Seller and the Seller will supply all necessary personnel and tools for the provision of the Services according to the details specified in its quotation.

10.2 Where Services are to be provided under Condition 10, unless otherwise agreed in Writing (and/or as approved in writing by the Seller), the Seller shall be responsible for the preparation of the Site including, but not being limited to, all work to buildings, foundations, supporting structures and fixing points; the proper unloading, safe-keeping and insurance of the Goods from the time of delivery;

10.3 the provision of scaffolding, lifting and any other equipment (excluding tools) to allow or assist the Seller to provide the Services;

10.4 any other matter not included in the Seller's quotation but required to enable the Seller to provide the Services;

10.5 the Seller's prior written permission of the Site at such time and in such state as may enable it to complete the provision of the Services within any agreed time limit;

10.6 the removal of all debris and surplus materials from the Site at its sole cost and expense.

10.7 The Seller acknowledges that the Seller may not be able to perform the Services unless the Buyer has complied with its obligations under Condition 10.2. If the Buyer fails to provide all or any of the items referred to in Condition 10.2 when the Seller reasonably requires them or if its reasonable satisfaction, then the Seller may in its discretion at its sole option either arrange for the provision of such item or items as it may require or charge such expense as may be incurred in providing such item or items to the Buyer or make such provisions of Condition 10.4 below.

10.8 The Seller acknowledges that the ability of the Seller to provide the Services is of primary importance to the Seller. In the event that the Seller is unable to provide the Services at the time and/or on the dates specified in the Seller's quotation, the Seller shall be deemed to have agreed to its obligations under Condition 10.2, 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 of £1000 (one thousand pounds) per day and with reference to its standard rates charged for the provision of services similar or identical to the Services by way of compensation for each day or part of a day which the Seller is prevented from providing the Services, subject to a maximum of the Contract price.

11. **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 for the Seller to enter the premises and to carry out the work and to carry out and perform the Services and undertakes to 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 be prevented by any law, regulation, or statutory provision, or any other law, 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 to perform the Services and it has arranged for the separation 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 that it has full and proper authority for the Seller to perform the Services and any 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 on such date as required by the Seller and time shall be of the essence in this regard;

11.1.8 it has assessed the Goods in relation to its requirements and determined that the Goods are suitable and fit for the purposes the Buyer intends;

11.1.9 the installation, use and operation of the Goods comply, both before and after installation, with all applicable laws, regulations and statutory provisions but not being limited to health and safety legislation;

11.1.10 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 for use in connection with the Goods, the use of such piece or pieces of equipment is fit for purpose and does not adversely affect the suitability or fitness for purpose of the Goods.

11.1.11 it will comply and has complied with all applicable anti-slavery and human rights laws, statutes, regulations from time to time in force including but not limited to the Modern Slavery Act 2015;

11.1.2 The Buyer shall indemnify and hold the Seller and its officers, directors, employees, and agents harmless against any claims, demands, liability, direct loss and/or damages, including reasonable costs and expenses, arising from any misrepresentation and/or breach by the Buyer of the warranties contained in Condition 11; and/or

11.2.2 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, the Seller shall be entitled to supply such place an Order in Writing therefor and upon acceptance in Writing by the Seller of such Order the provisions of these Conditions shall apply to those additional Goods and/or Services.

13. **SELLER'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 (fair wear and tear excepted) in the Goods and/or Services which, under conditions of proper use and maintenance, results from defects in the Seller's 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 provision of the Services is completed.

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 the price paid by the Buyer to the Seller for the Goods.

13.3 In those circumstances where the Seller elects to provide a refund or 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, it 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/or expenses associated therewith) and undertakes that it shall comply with the written or oral instructions given by the Seller from time to time in this regard or (if there are none) any relevant laws and good trade practice. The Buyer shall make good any damage caused to its premises, or that of any third party, by its failure to comply with the written or oral instructions given by the Seller from time to time in this regard or (if there are none) any relevant laws and good trade practice. The Buyer shall make good any damage caused to its premises, or that of any third party, by its failure to comply with the written or oral instructions given by the Seller from time to time in this regard or (if there are none) any relevant laws and good trade practice. The Buyer shall make good any damage caused to its premises, or that of any third party, by its failure to comply with the written or oral instructions given by the Seller from time to time in this regard or (if there are none) any relevant laws and good trade practice. The Buyer shall make good any damage caused to its premises, or that of any third party, by its failure to comply with the written or oral instructions given by the Seller from time to time in this regard or (if there are none) any relevant laws and good trade practice. 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