



STANDARD TERMS AND CONDITIONS OF PURCHASE

1. DEFINITIONS AND INTERPRETATION

1.1 In these Conditions the following definitions apply:

"Acceptance Conditions"	has the meaning given in clause 6.5;
"Affiliate"	means any entity that directly or indirectly Controls, is Controlled by or is under common Control with, another entity;
"Applicable Law"	means all applicable laws, legislation, statutory instruments, regulations and governmental guidance having binding force whether local or national or international in any relevant jurisdiction;
"Bribery Laws"	means: <ul style="list-style-type: none">(a) the Bribery Act 2010 and all other applicable UK legislation, statutory instruments and regulations in relation to bribery or corruption;(b) the Foreign Corrupt Practices Act of 1977; and(c) any similar or equivalent Applicable Law in any other relevant jurisdiction;
"Brush"	means the Brush company that issues the Order, being either: <ul style="list-style-type: none">(a) HAWKER SIDDELEY SWITCHGEAR LIMITED, a company registered in England and Wales with company number 00370559 and with the registered address at Nottingham Road, Loughborough, Leicestershire, LE11 1EX; or(b) BRUSH TRANSFORMERS LIMITED, a company registered in England and Wales with company number 00589650 and with the registered address at Nottingham Road, Loughborough, Leicestershire, LE11 1EX; or(c) BRUSH GROUP LIMITED, a company registered in England and Wales with company number 14235315 and with the registered address at Nottingham Road, Loughborough, England, LE11 1EX; or(d) any other company in the BRUSH group of companies that issues an Order as stated on the face of the Order;
"Business Day"	means a day other than a Saturday, Sunday or bank or public holiday in England;
"Business Policies"	means Brush's business policies as amended by Brush from time to time by notification to the Supplier. The Business Policies are available on the Brush website at https://www.brush.eu/legal-quality/supplier-portal/ ;



"Conditions"	means Brush's terms and conditions of purchase set out in this document and as amended from time to time;
"Confidential Information"	means any commercial, financial or technical information, information relating to the Deliverables, plans, know-how or trade secrets (whether it has been identified as confidential or not), or any information related to the business, affairs, customers, clients, suppliers, plans or strategy of a party or which is developed by a party in performing its obligations under, or otherwise pursuant to the Contract and in the case of Brush any drawings, technical specifications or such other materials identified as confidential by Brush and provided to the Supplier;
"Contract"	means the agreement between the Supplier and Brush for the sale and purchase of the Deliverables made up of the Order and these Conditions;
"Control"	means in relation to a body corporate, the beneficial ownership of more than 50% of the issued share capital of a company or the power of a party to secure that the affairs of the body corporate are conducted in accordance with the wishes of that party and "Controls" , "Controlled" and "under common Control" will be construed accordingly;
"Controller"	will have the meaning given in applicable Data Protection Laws from time to time;
"Data Protection Laws"	<p>means all Applicable Law relating to the processing, privacy and/or use of Personal Data, as applicable to either party or the Deliverables, including:</p> <ul style="list-style-type: none">(a) the GDPR;(b) the Data Protection Act 2018;(c) any laws which implement any such laws and any laws that replace, extend, re-enact, consolidate or amend any of the foregoing;(d) all guidance, guidelines and codes of practice issued by any relevant Data Protection Supervisory Authority relating to such Data Protection Laws (in each case whether or not legally binding); and(e) any similar or equivalent Applicable Law, guidance, guidelines and codes of practice to those listed above in any other relevant jurisdiction;
"Data Protection Supervisory Authority"	means any regulator, authority or body responsible for administering Data Protection Laws;
"Deliverables"	means the Goods or Services (including the goods ancillary to the supply of the Services) or both, as the case may be, supplied by the Supplier to Brush under the Contract;
"Delivery"	means the point at which the Goods are deemed to be delivered to Brush under clause 5.7;



"Documentation"	means any descriptions, instructions, manuals, literature, technical details or other related materials supplied in connection with the Deliverables;
"Force Majeure"	means any of the following events: (i) act of God, fire, flood, lightning, earthquake or other natural disaster; (ii) war, riot, revolution, terrorism, or civil commotion or civil unrest; (iii) collapse of buildings, fire, explosion or accident; (iv) blockage or embargo;
"GDPR"	means: <ul style="list-style-type: none">(a) the General Data Protection Regulation, Regulation (EU) 2016/679; and(b) to the extent that the Deliverables are supplied in the United Kingdom, Regulation (EU) 2016/679 as it forms part of domestic law in the United Kingdom by virtue of section 3 of the European Union (Withdrawal) Act 2018 (including as further amended or modified by the laws of the United Kingdom or of a part of the United Kingdom from time to time);
"Good Industry Practice"	means in relation to any undertaking, in any circumstances, the degree of professionalism, skill, diligence, prudence and foresight which would be expected from a recognised and market leading company engaged in the same type of activity under the same or similar circumstances and which is best in its class;
"Goods"	means the goods and related accessories, spare parts and Documentation and other physical material set out in the Order to be supplied by the Supplier to Brush in accordance with the Contract;
"Intellectual Property Rights"	means copyright, patents, know-how, trade secrets, trade marks, trade names, design rights, rights in get-up, rights in goodwill, rights in software, rights in Confidential Information, rights to invention, rights to sue for passing off, domain names and all other intellectual property rights and similar rights and, in each case: (i) whether registered or not; (ii) including any applications to protect or register such rights; (iii) including all renewals and extensions of such rights or applications; (iv) whether vested, contingent or future; (v) to which the relevant party is or may be entitled, and (vi) in whichever part of the world existing;
"IPR Claim"	has the meaning given in clause 17.1;
"Living Wage"	means the real Living Wage (which is expressed as an hourly wage rate) which is calculated each year by the Resolution Foundation on behalf of the Living Wage Foundation with the relevant calculation being overseen by the Living Wage Commission or, as the case may be, by successor organisations to any of the foregoing. The Living Wage is not a statutorily prescribed wage rate and should not be confused with the same;



"Location"	means the address or addresses set out in the Order for: (a) delivery or collection of the Goods; and/or (b) performance of the Services;
"MSA"	means the Modern Slavery Act 2015 and/or any similar or equivalent Applicable Law in any other relevant jurisdiction;
"MSA Offence"	has the meaning given in clause 13.2;
"Order"	means Brush's order for the Deliverables as set out in Brush's order form;
"Personal Data"	will have the meaning given in applicable Data Protection Laws from time to time;
"Price"	has the meaning given in clause 11.1;
"Process"	has the meaning given in applicable Data Protection Laws from time to time (and related expressions, including "processing" , "processed" , and "processes" will be construed accordingly);
"Processor"	will have the meaning given in applicable Data Protection Laws from time to time;
"Services"	means the services set out in the Order and to be supplied by the Supplier to Brush in accordance with the Contract;
"Specification"	means: (a) the description or Documentation provided by the Supplier for the Deliverables set out or referred to in the Contract; and/or (b) any written requirements and specifications given by Brush to the Supplier in respect of the Deliverables;
"Supplier"	means the named party in the Contract who has agreed to sell the Deliverables to Brush and whose details are set out in the Order;
"Supplier Personnel"	means all employees, officers, staff, other workers, agents and consultants of the Supplier, its Affiliates and any of their sub-contractors who are engaged in the provision of the Deliverables from time to time;
"VAT"	means value added tax under the Value Added Taxes Act 1994 or any other similar sale or fiscal tax applying to the sale of the Deliverables.

1.2 In these Conditions, unless the context otherwise requires:

- 1.2.1 a reference to the Contract includes these Conditions, the Order, and their respective schedules, appendices and annexes (if any);
- 1.2.2 any clause, schedule or other headings in these Conditions are included for convenience only and will have no effect on the interpretation of these Conditions;



- 1.2.3 a reference to a 'party' means either the Supplier or Brush and includes that party's personal representatives, successors and permitted assigns;
- 1.2.4 a reference to a 'person' includes a natural person, corporate or unincorporated body (in each case whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns;
- 1.2.5 a reference to a gender includes each other gender and words in the singular include the plural and vice versa;
- 1.2.6 any words that follow '**include**', '**includes**', '**including**', '**in particular**' or any similar words and expressions will be construed as illustrative only and will not limit the sense of any word, phrase, term, definition or description preceding those words;
- 1.2.7 a reference to legislation is a reference to that legislation as amended, extended, re-enacted or consolidated from time to time and includes all subordinate legislation made from time to time.

2. APPLICATION OF THESE CONDITIONS

- 2.1 These Conditions apply to and form part of the Contract between the Supplier and Brush. They supersede any previously issued terms and conditions of purchase or supply.
- 2.2 No terms or conditions endorsed on, delivered with, or contained in the Supplier's quotation, sales conditions, confirmation of order, specification or other document will form part of the Contract.
- 2.3 No variation of the Contract will be binding unless expressly agreed in writing and executed by a duly authorised signatory on behalf of each party.
- 2.4 To the extent there is any inconsistency or conflict between these Conditions and the Order, the contents of the Order shall prevail to the extent of such conflict or inconsistency only.

3. ORDERS

- 3.1 Each Order by Brush to the Supplier will be an offer to purchase Deliverables subject to the terms of the Contract including these Conditions.
- 3.2 An Order may be withdrawn or amended by Brush at any time before acceptance by the Supplier. An Order will lapse unless accepted by the Supplier before the expiry of 10 Business Days after the date of the Order. If the Supplier is unable to accept an Order, it will notify Brush in writing promptly.
- 3.3 The Order will be deemed to be accepted on the earlier of:
 - 3.3.1 the Supplier issuing written acceptance of the Order; or
 - 3.3.2 any act by the Supplier consistent with fulfilling the Order,at which point and on which date the Contract will come into existence.
- 3.4 These Conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 3.5 The Supplier waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Supplier that is inconsistent with these Conditions.



4. **CANCELLATION**

- 4.1 Brush will have the right to cancel the Order for the Deliverables or for any part of the Deliverables which have not yet been, in the case of Goods delivered, and in the case of Services performed.
- 4.2 Without prejudice to the generality of clause 4.1, if Brush has agreed with the Supplier in the Order or otherwise that Brush will pay any customs clearance charges, duties and taxes due at the entry of the Goods into the United Kingdom (the "**Levies**") and such Levies have increased since the date when Brush placed the Order, Brush will have the right to cancel the Order in whole or in part.
- 4.3 In relation to any Order cancelled or part-cancelled under clauses 4.1 or 4.2, on receipt of validly issued and properly documented evidence, Brush will pay for:
- 4.3.1 in respect of any Goods, that part of the Price which relates to the Goods which at the time of cancellation have been delivered to, commissioned for, manufactured and ready for delivery to, or which are in transit to, Brush; and
 - 4.3.2 in respect of any Goods, the reasonable costs of labour and materials which the Supplier has purchased to fulfil the Order for the Goods and which cannot be used for other orders or be returned for a refund. At Brush's request and cost, the Supplier will deliver such materials to Brush; and
 - 4.3.3 in respect of any Services, that part of the Price that relates to the Services which, at the time of cancellation have been paid for or contractually committed by the Supplier (in each case acting reasonably) and cannot be cancelled.
- 4.4 To the maximum extent possible, the Supplier will mitigate all costs relating to the Order immediately upon receipt of cancellation under clauses 4.1 or 4.2.

5. **DELIVERY AND PERFORMANCE**

- 5.1 Where the Supplier is based in the United Kingdom, unless otherwise stated in the Order, each Order will specify whether the Goods are to be:
- 5.1.1 delivered DAP Incoterms 2020 by the Supplier to the Location (provided always that the Location must be in the United Kingdom); or
 - 5.1.2 supplied FCA Incoterms 2020 at the Location for collection by or on behalf of Brush (provided always that the Location must be in the United Kingdom).
- 5.2 Where the Supplier is not based in the United Kingdom, unless otherwise stated in the Order, each Order will specify whether the Goods are to be:
- 5.2.1 delivered DAP Incoterms 2020 by the Supplier to the Location (provided always that the Location must be in the United Kingdom); or
 - 5.2.2 supplied FCA Incoterms 2020 at the Location for collection by or on behalf of Brush.
- 5.3 If the parties have agreed that the Goods will be collected by or on behalf of Brush, any references to deliver, Delivery or delivered in this Contract will be understood to mean collect, collection or collected as applicable.
- 5.4 The Order will set out the delivery date (or collection date, as applicable) for the Goods. If the Order states that Brush will collect the Goods, Brush will use its reasonable endeavours to collect the Goods within the period specified in the Order.
- 5.5 Brush will be entitled, at no additional cost, to postpone the delivery date (or collection date, as applicable) of all or any of the Goods and/or Services upon giving notice to the Supplier.



- 5.6 The Supplier will not deliver the Goods prior to the agreed delivery date specified in the Order unless it has expressly agreed to do so with Brush.
- 5.7 Unless otherwise stated in the Order, the Goods will be deemed delivered:
- 5.7.1 if delivered by or on behalf of the Supplier under clause 5.1.1 or 5.2.1, in accordance with DAP Incoterms 2020; or
 - 5.7.2 if collected by or on behalf of Brush under clause 5.1.2 or 5.2.2, in accordance with FCA Incoterms 2020.
- 5.8 The Services will be performed by the Supplier at the Location on the date(s) specified in the Order.
- 5.9 The Services will be deemed performed on confirmation of completion of the Acceptance Conditions by Brush in writing.
- 5.10 Unless otherwise agreed in writing with Brush, all Deliverables will be delivered or performed during Brush's normal business hours.
- 5.11 The Goods will not be delivered and the Services will not be performed in instalments unless otherwise agreed in writing by Brush.
- 5.12 The Supplier will notify Brush in writing, in advance of Delivery or performance of any Deliverables, if any of the Deliverables are classed as hazardous or dangerous, according to Applicable Laws, of any special personal protective equipment, or health and safety requirements that are necessary for receipt or handling of the Deliverables, so Brush can ensure that such requirements are met and that all appropriate risk assessments are carried out.
- 5.13 Where the Deliverables are subject to statutory control, substance restrictions and/or require special certification or consideration for their use, it is the responsibility of the Supplier to notify Brush prior to their shipment in order to seek advice and/or approval. Failure to do so is considered a material breach of the Contract.
- 5.14 Each Delivery of Goods or performance of the Services will be accompanied by a delivery note stating:
- 5.14.1 the date of the Order and the order number;
 - 5.14.2 the date of shipment or performance;
 - 5.14.3 in the case of Goods, the product numbers and type and quantity of Goods in the Delivery;
 - 5.14.4 in the case of Goods, the unit of measure and the net and gross weight;
 - 5.14.5 in the case of Goods, whether any packaging material is to be returned, in which case Brush will, after the Goods are unpacked, make them available for collection by the Supplier at the Supplier's expense;
 - 5.14.6 in case of Goods, the harmonised system codes used for customs clearance;
 - 5.14.7 in case of Goods, the applicable dual use classification;
 - 5.14.8 in case of Goods, the country of origin;
 - 5.14.9 in the case of Services, the category, type and quantity of Services performed;
 - 5.14.10 in the case of Services, details of the Supplier Personnel performing the Services;



- 5.14.11 if the Deliverables are considered to be of a hazardous nature and any other health, safety or environmental requirements;
- 5.14.12 any special instructions, handling and other requests;
- 5.14.13 the Supplier's contact details; and
- 5.14.14 any additional information requested by Brush as set out in the Order.

5.15 The Supplier will ensure that the Deliverables are:

- 5.15.1 appropriately packaged for Delivery to ensure that they are not damaged or lost in transit;
- 5.15.2 packaged in accordance with the requirements and regulations of the intended destination. This includes DEFRA markings, certification and any legislative requirements associated with the use and disposal of packaging materials; and
- 5.15.3 adequately marked to allow traceability back to the source documents and the Contract.

6. **INSPECTION AND ACCEPTANCE TESTING**

- 6.1 Brush may require pre-Delivery and/or post-Delivery acceptance tests to be performed or to be carried out, at Brush's option, either by Brush or the Supplier, and the results of the tests will be made available to Brush.
- 6.2 Brush may inspect and test the Deliverables during performance or during manufacture or processing, or prior to despatch, and the Supplier will provide Brush with access to and use of all facilities reasonably required for this purpose.
- 6.3 Any inspection or testing of the Deliverables will not be deemed to be acceptance of the Deliverables or a waiver of any of Brush's other rights and remedies, including its right to reject.
- 6.4 Brush will not have accepted, or be deemed to have accepted, the Deliverables until:
 - 6.4.1 Brush has carried out the inspection and testing in accordance with the Inspection and Test Plan as agreed by the parties from time to time ("ITP"); and
 - 6.4.2 the Acceptance Conditions are fulfilled and Brush has notified confirmation of such to the Supplier in writing. If Brush does not inform the Supplier of any non-compliance, issues or defects within 30 days from Delivery or performance of the Deliverables, the Deliverables will be deemed accepted.
- 6.5 The "**Acceptance Conditions**" are that:
 - 6.5.1 for Goods, the Goods, delivery note and a signed Certificate of Conformity or any other certificates stated in the Contract have been delivered to or at the Location in accordance with clauses 5.7 and 5.14;
 - 6.5.2 for Services, the Services have been performed at the Location and a signed Certificate of Conformity or any other certificates stated in the Contract have been provided to Brush;
 - 6.5.3 all pre-Delivery and post-Delivery acceptance tests and inspections have been completed to the reasonable satisfaction of Brush; and
 - 6.5.4 Brush has notified the Supplier in writing that the Deliverables have been delivered or performed (as the case may be) in full compliance with the Order and the Conditions of the Contract.



6.6 If during the ITP inspection carried out in accordance with clause 6.4.1, 8 or more snags are identified per unit, then such units will be classified as a 'Non-Conforming' and Brush will be entitled to the remedies set out in clause 8.

6.7 Any acceptance of defective, late or incomplete Deliverables or any payment made in respect thereof, will not constitute a waiver of any of Brush's rights and remedies, including its right to reject.

7. WARRANTIES AND OBLIGATIONS

7.1 The Supplier warrants and represents that it will:

- 7.1.1 ensure the Contract is executed by a duly authorised signatory on behalf of the Supplier;
- 7.1.2 have all consents, licences and authorisations necessary to deliver and perform the Deliverables;
- 7.1.3 ensure compliance and fulfilment of its obligations in accordance with the Order and the Contract;
- 7.1.4 provide high quality and accurate Documentation for the Deliverables;
- 7.1.5 provide all equipment, tools and vehicles and such other items as are required to provide the Services;
- 7.1.6 observe, and ensure that the Supplier Personnel observe all health and safety rules and regulations and any other security requirements that apply at any of Brush's premises including the Location;
- 7.1.7 keep Brush fully informed of all activities concerning the Deliverables and provide Brush with activity reports on request;
- 7.1.8 advise Brush of any applicable export licensing requirements applicable in respect of any Deliverables prior to acceptance (or deemed acceptance) of an Order in accordance with clause 3.3, and will ensure that the provision of any such licence does not impact the agreed delivery date; and
- 7.1.9 not, directly or indirectly, sell, provide, export, re-export, transfer, divert, loan, lease, consign, or otherwise release or dispose of any Deliverables to or via any individual, entity, or destination, or for any use prohibited by Applicable Laws without having obtained prior authorization from the competent governmental authorities as required by all such Applicable Laws.

7.2 The Supplier further warrants and represents that it understands Brush's business and needs.

7.3 The Supplier warrants and represents that the Deliverables will:

- 7.3.1 conform with any sample, and with the quality and description of the Specification and to any descriptions given in quotations, estimates and sales material;
- 7.3.2 be manufactured or produced in accordance with any designs provided by Brush and that the materials and processes specified by Brush will be strictly followed unless otherwise agreed in writing with Brush;
- 7.3.3 be free from defects in design, material and workmanship for a period of 24 months from Delivery or performance;
- 7.3.4 be new and unused;
- 7.3.5 comply with all Business Policies, Applicable Laws and Good Industry Practice;



- 7.3.6 if Goods, be adequately packed to withstand all hazards during transit and handling (at the Supplier's cost) and the Supplier will be liable for any loss or damage to the Goods resulting from insufficient and/or defective packing;
 - 7.3.7 if Services, be supplied with reasonable care and skill within the meaning of the Supply of Goods and Services Act 1982, Part II, s 13;
 - 7.3.8 be fit for any purpose held out by the Supplier and for Brush's needs; and
 - 7.3.9 in respect of any media on which the results of the Services are supplied, be free from defects in material and workmanship and of satisfactory quality within the meaning of the Sale of Goods Act 1979 (or any similar or equivalent Applicable Law in any other relevant jurisdiction).
- 7.4 On Brush's request (whether before or after Delivery or performance), the Supplier will provide, as soon as possible:
- 7.4.1 all certifications and permits relevant to the Deliverables; and
 - 7.4.2 all necessary trade data relevant to the Deliverables, including:
 - (a) the applicable dual use classification codes;
 - (b) the applicable customs commodity codes;
 - (c) the country of origin information;
 - (d) the CAS Registry Number and the UN Number;
 - (e) any additional information that may affect the movement, classification, or treatment of the Deliverables upon import or export, including whether the Deliverables are eligible for preferential tax or tariff treatment (such as preferential certificates of origin as governed by any applicable bi-lateral or regional free trade agreements). Where the Deliverables benefit from a preferential tax or tariff treatment the Supplier shall indemnify Brush for any costs incurred by Brush from any incorrect classification of the Deliverables and/or any other costs and losses incurred by Brush if it is ascertained that the Deliverables do not meet the qualifying criteria to benefit from such preference.
- 7.5 The Supplier further warrants that its responses to Brush's due diligence questionnaire are accurate as at the date they are submitted and that it will inform Brush as soon as possible if any of the information provided or its circumstances change.
- 7.6 The Supplier:
- 7.6.1 will not, and it will use reasonable efforts to ensure that all Supplier Personnel will not, use, consume or reprocess materials stipulated in the European Directive for the Restriction of Hazardous Substances, RoHS 2011/65/EU; and
 - 7.6.2 shall comply at all times with the REACH Regulation 2006 ((EC) No 1907/2006) and any similar or equivalent Applicable Law in any other relevant jurisdiction; and
 - 7.6.3 shall provide Brush with any information that Brush may require (whether before or after Delivery or performance) relating to environmental and sustainability matters.

Upon Brush's request, the Supplier shall provide evidence of compliance with clause 7.6.1 and clause 7.6.2 and it undertakes to obtain evidence that any Supplier Personnel have complied with the same.



- 7.7 Any breach of clause 7.6.1 and/or clause 7.6.2 by the Supplier will be deemed a material breach of this Contract that is not remediable and will entitle Brush to immediately terminate this Contract by giving notice to the Supplier.
- 7.8 The Supplier agrees that the approval by Brush of any design or Specification provided by the Supplier will not relieve the Supplier of any of its obligations under this clause 7.
- 7.9 The Supplier will ensure that spare, replacement and service parts for the Goods will continue to be made available to Brush for a reasonable period of time following Delivery. The Supplier will provide Brush with no less than 6 months' prior written notice in the event that the Goods or any spare, replacement and service parts for the Goods are to be discontinued or cease to otherwise be available for purchase from the Supplier or any third party. Following such a notice, Brush will be entitled to purchase the affected Goods and parts from the Supplier at prices to be agreed by the parties acting reasonably, subject to the terms and conditions of this Contract.
- 7.10 The Supplier will, but only to the extent of its obligations in this Contract, make arrangements to secure continuous improvement in the way in which the Deliverables are manufactured or supplied or both, having regard to a combination of economy, efficiency and effectiveness.
- 7.11 If the Supplier breaches any of the terms in this clause 7, Brush will have a right, at its discretion, to rely on any of the remedies set out in clause 8.
- 7.12 The terms of these Conditions will apply to any Deliverables that are remedied, repaired, replaced, corrected or re-performed and any such Deliverables will benefit from a new warranty (including a new warranty period) under clause 7.3.

8. BRUSH REMEDIES

- 8.1 If the Supplier fails to deliver any of the Goods or perform any of the Services by the date specified in the Order, Brush will (without prejudice any other rights and remedies) be entitled to:
- 8.1.1 liquidated damages for each week or part of a week of delay, at the rate of 2% of the Price due for the Order, up to a maximum of 10% of the Price due for the Order. Subject to the foregoing, the liquidated damages payable under this clause 8.1.1 will accrue from failure to deliver the Goods or perform any of the Services by the date specified in the Order, until the earlier of: (i) the Supplier delivering the Goods or performing the Services under clause 8.1.2; or (ii) a third party delivering the Goods or performing the Services under clause 8.1.3. The parties confirm that these liquidated damages are reasonable and proportionate to protect Brush's legitimate interest in performance of the Contract;
- 8.1.2 in addition to the rights under clause 8.1.1, request the Supplier to deliver the Goods or perform the Services on an expedited basis, at the Supplier's own cost, by a date communicated by Brush; and
- 8.1.3 if the Supplier is unable to deliver the Goods or perform the Services by the date communicated by Brush under clause 8.1.2, and in addition to the rights under clause 8.1.1, reject the Goods or Services and purchase the same or similar Goods or Services from another supplier and recover from the Supplier (i) the amount by which the price payable by Brush to acquire those Goods or Services from another supplier exceeds the price payable under the Contract; (ii) a full refund of any monies paid in advance for the affected Goods or Services; and (iii) any other costs reasonably incurred.
- 8.2 If:
- 8.2.1 the Goods and/or Services are not in full compliance with the terms and conditions of the Contract including clause 7; or
- 8.2.2 the Supplier delivers a volume of the Goods which differs from the volume specified in the Order,



Brush will (without prejudice to any other rights and remedies) be entitled to recover from the Supplier all costs and losses resulting to Brush from the Supplier's failure to comply with its obligations in clauses 5, 6 and 7, and at Brush's sole discretion:

- (a) request the Supplier to deliver the correct volume of Goods on an expedited basis, by a date communicated by Brush; or
- (b) reject the Deliverables (in whole or in part) whether or not title has passed and require the Supplier to provide a full refund of the price of the rejected Deliverables (if paid); or
- (c) reject the Deliverables and purchase the same or similar Deliverables from another supplier and recover from the Supplier (i) the amount by which the price payable by Brush to acquire those Deliverables from another supplier exceeds the price payable under the Contract and any loss of profit; (ii) a full refund of any monies paid in advance for the affected Deliverables; and (iii) any other costs reasonably incurred; or
- (d) at Brush's option and at the Supplier's cost, require the Supplier to repair, replace or reperform (as applicable) the rejected, defective or non-compliant Deliverables; or
- (e) at the Supplier's cost, Brush may repair the defective or non-compliant Deliverables. All costs and expenses incurred by Brush in the performance of such repair will be recoverable as a debt from the Supplier or may be set off by Brush against the cost of Goods or Services supplied by the Supplier to Brush.

- 8.3 The provisions of clause 8.1 will not apply if Delivery or performance is delayed as a result of Brush failing to make the Location available for the Delivery of the Goods or performance of the Services.
- 8.4 If Brush is entitled to liquidated damages in accordance with clause 8.1.1, the Supplier will pay these liquidated damages on demand or Brush may deduct them from its payments to the Supplier.
- 8.5 Any rejected Goods may be returned to the Supplier by Brush at the Supplier's cost and risk. The Supplier will pay to Brush a reasonable charge for storing and returning any of the Goods over-delivered or rejected.
- 8.6 If Brush informs the Supplier that any of the Deliverables supplied are defective or non-compliant, the Supplier will undertake the necessary 8D Root Cause Analysis to identify the cause of the defect and to implement measures so as to rectify and prevent reoccurrence of the identified defect.
- 8.7 Brush will be entitled to exercise its rights under clauses 7 and 8 regardless of whether the Deliverables have been accepted under the Acceptance Conditions and notwithstanding that the Deliverables were not rejected following their initial inspection under clause 6.5.
- 8.8 The rights of Brush in this clause 8 are without prejudice to Brush's other rights and remedies under the Contract and under Applicable Law.

9. **TITLE AND RISK**

- 9.1 Risk in the Goods will pass to Brush on Delivery.
- 9.2 Title in the Goods will pass to Brush on the earlier of:
 - 9.2.1 Brush paying the Supplier for the Goods; or
 - 9.2.2 Delivery of the Goods,



except where the Goods are supplied from outside the United Kingdom, in which case title to the Goods shall pass to Brush as soon as the Goods enter the territory of the United Kingdom, prior to customs clearance.

- 9.3 The passing of title will not prejudice any other of Brush's rights and remedies, including its right to reject.
- 9.4 Neither the Supplier, or any other person, will have a lien on, right of stoppage in transit or other rights in or to any Goods to which title has vested in Brush, and the Supplier will ensure that relevant third parties accept the exclusion of such lien and rights.
- 9.5 The Supplier warrants and represents that it:
 - 9.5.1 has at the time the Contract is made full, clear and unencumbered title to the Goods, and the full, clear and unencumbered right to sell and deliver them to Brush; and
 - 9.5.2 will hold such title and right to enable it to ensure that Brush will acquire a valid, unqualified title to the Goods and will enjoy quiet possession of them.

10. **FREE ISSUE MATERIAL**

- 10.1 Where Brush issues material free of charge to the Supplier to be used in the production or manufacture of Goods provided by the Supplier under this Contract, such material will be and remain at all times the property of Brush.
- 10.2 Jigs and patterns made by or provided at the request of Brush in connection with the manufacture of the Goods will at all times remain the property of Brush.
- 10.3 The risk to any free issue material, jigs and/or patterns supplied by Brush to the Supplier will pass to the Supplier on delivery of the same at the location agreed by Brush and the Supplier.
- 10.4 The Supplier will:
 - 10.4.1 take all necessary steps to mark the free issue material and any jigs and patterns so they are easily identifiable as Brush's property;
 - 10.4.2 maintain all free issue material, jigs and patterns in good order and condition; and
 - 10.4.3 insure the free issue material, jigs and patterns for the replacement value against any loss, damage or destruction.
- 10.5 If the Supplier, through bad workmanship or negligence, renders any free issue material scrap, the Supplier will reimburse Brush for the total value of such free issue material.
- 10.6 The Supplier must not, without the prior written consent of Brush, use or permit to be used, the free issue material, jigs, patterns or drawings thereof for any purpose other than the performance of this Contract.
- 10.7 The Supplier will not in any circumstances have any lien (whether general or otherwise) in respect of any free issue material, jigs and/or pattern and if the Supplier suffers any of the events listed in clauses 20.1.4(a) to 20.1.4(m), Brush may enter any of the Supplier's premises, or the Supplier will procure for Brush to enter any third party premises, where any free issue material, jigs and/or patterns are held and recover the same.



10.8 On the expiry or termination of the Contract, the Supplier will deliver, at Brush's cost, any free issue material (which has not been incorporated in Goods), any Goods in which free issue material has been incorporated, and any jigs and/or patterns that have been supplied by Brush under this clause 10.

11. **PRICE**

11.1 The price for the Deliverables will be as set out in the Order or where no such provision is set out, will be calculated in accordance with the Supplier's scale of charges as advised by the Supplier and received and acknowledged by Brush before the date the Order is placed (the "**Price**"). No increase in the Price may be made by the Supplier after the Order is placed by Brush.

11.2 All Prices are inclusive of the costs of packaging, delivery, unloading, unpacking, shipping, carriage, insurance, every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services, and all other charges or taxes related to the Goods and Services. No extra charges will be effective unless agreed in writing with Brush.

11.3 Without prejudice to the generality of clause 11.2 and subject to clause 4.2, if agreed by Brush and the Supplier in writing in the Order, Brush will pay such Levies for the Deliverables as have been agreed between the parties.

11.4 Brush will be entitled to the Supplier's standard discount for prompt payment and to any volume discounts or rebates (if any).

12. **PAYMENT**

12.1 The Supplier shall invoice Brush for: (a) the Goods within sixty (60) days after the date of completion of Delivery; (b) the Services within sixty (60) days after the completion of the performance of the Services. Brush shall have no liability to pay for any invoice(s) unless it is received by Brush within sixty (60) days following the date of completion of the performance of the Services or Delivery of the Goods (as the case may be). Each invoice will be marked for the attention of the Account Department and will include such supporting information required by Brush to verify the accuracy of the invoice, including the relevant purchase order number.

12.2 Brush will pay each validly submitted and undisputed invoice of the Supplier within 45 days of the date of the invoice.

12.3 Brush will be entitled to reject and return to the Supplier any invoice which does not comply with all Applicable Laws in which Brush has its registered office.

12.4 All amounts payable by Brush under the Contract are exclusive of VAT. If VAT is due in respect of the Deliverables it will be charged at the applicable rate at the time the invoice was issued and Brush will pay such additional amount on receipt of a valid VAT invoice from the Supplier.

12.5 Without prejudice to any other remedy, Brush will be entitled to set-off under the Contract any liability which it has or any sums which it owes to the Supplier in accordance with clause 24.6.

12.6 If a party fails to make any payment due to the other party under the Contract by the due date for payment, then the defaulting party will pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each day at 2% a year above the Bank of England's base rate from time to time. Where a payment is disputed in good faith, interest is only payable after the dispute is resolved, on sums found or agreed to be due, from the due date until payment.

13. **COMPLIANCE WITH THE LAW**

13.1 The Supplier will, and it will ensure that the Supplier Personnel will:

13.1.1 comply with all Business Policies and Bribery Laws;



- 13.1.2 not by any act or omission, place Brush in breach of any Business Policies and applicable Bribery Laws;
 - 13.1.3 not make or receive any bribe (which term will be construed in accordance with the Bribery Act 2010 or any similar or equivalent Applicable Law in any other relevant jurisdiction) or other improper payment or advantage, or allow any such bribe or improper payment or advantage to be made or received on its behalf, either in the United Kingdom or elsewhere, and the Supplier will ensure that such bribes or improper payments or advantages are not made or received directly or indirectly on its behalf.
- 13.2 The Supplier undertakes, warrants and represents that:
- 13.2.1 neither it nor any of the Supplier Personnel:
 - (a) have committed an offence under the MSA (an "**MSA Offence**"); or
 - (b) have been notified that they are subject to an investigation relating to an alleged MSA Offence or prosecution under the MSA; or
 - (c) are aware of any circumstances within their supply chain that could give rise to an investigation relating to an alleged MSA Offence or prosecution under the MSA; and
 - 13.2.2 they will comply with the Business Policies and the MSA.
- 13.3 The Supplier will ensure that it will not by any act or omission commit, or cause, facilitate or contribute to the commission by any person of a Corporate Failure to Prevent Offence, a UK Tax Evasion Offence, or a Foreign Tax Evasion Offence as each of those terms (and "**associated with**") is defined in: (i) Part 3 of the Criminal Finances Act 2017 or any similar or equivalent Applicable Law in any other relevant jurisdiction, and (ii) any guidance published under the same.
- 13.4 The Supplier warrants and represents that neither itself, nor to the best of its knowledge, information and belief, the Supplier Personnel have:
- 13.4.1 been investigated in connection with, or charged with having committed or facilitated the commission of any UK Tax Evasion Offence or any Foreign Tax Evasion Offence;
 - 13.4.2 received any court orders, warrants, oral or written notices from a government prosecuting authority concerning any actual or alleged violation by itself or the Supplier Personnel of any UK Tax Evasion Offence or any Foreign Tax Evasion Offence; or
 - 13.4.3 received any report or discovered any evidence suggesting that itself or the Supplier Personnel committed or facilitated the commission of any UK Tax Evasion Offence or any Foreign Tax Evasion Offence,
- where "**UK Tax Evasion Offence**" and "**Foreign Tax Evasion Offence**" have the definitions given to them in (i) Part 3 of the Criminal Finances Act 2017 or any similar or equivalent Applicable Law in any other relevant jurisdiction, and (ii) any guidance published under the same.
- 13.5 The Supplier will immediately notify Brush as soon as it becomes aware of a breach or possible breach of any of the requirements in this clause 13.
- 13.6 Any breach by the Supplier of this clause 13 will constitute a material breach and Brush will have the right to terminate the Contract immediately in accordance with clause 20.



14. INTELLECTUAL PROPERTY RIGHTS

- 14.1 All Specifications provided by Brush and all Intellectual Property Rights in the Deliverables made or performed in accordance with such Specifications will vest in and remain at all times the property of Brush and such Specifications may only be used by the Supplier as necessary to perform the Contract. The Supplier assigns (or will procure the assignment) to Brush absolutely, with full title guarantee, of all right, title and interest in any such Intellectual Property Rights, and the Supplier will do all such things and sign all documents necessary in Brush's opinion to vest all such Intellectual Property Rights in Brush, and to enable Brush to defend and enforce such Intellectual Property Rights, and the Supplier will at Brush's request waive or procure a waiver of applicable moral rights.
- 14.2 The Supplier will (at Brush's expense) promptly do (or procure to be done) all such other things and/or execute and deliver (or procure to be executed and delivered) all such other documents as may be necessary to vest title to the Intellectual Property Rights referenced in clause 14.1 in Brush.
- 14.3 All Specifications provided by the Supplier and all Intellectual Property Rights in the Deliverables made or performed in accordance with such Specifications will vest in and remain at all times the property of the Supplier. The Supplier grants to Brush, or shall procure the direct grant to Brush of, a fully paid-up, worldwide, non-exclusive, royalty-free, perpetual and irrevocable licence to copy and modify the Deliverables for the purpose of receiving and using the Deliverables.

15. DATA PROTECTION

- 15.1 The parties each acknowledge and agree that they may need to Process Personal Data relating to each party's representatives (in their respective capacities as Controllers) in order to (as appropriate): (a) administer and supply the Deliverables; (b) request and receive the Deliverables; (c) compile, dispatch and manage the payment of invoices relating to the Deliverables; (d) manage the Contract and resolve any disputes relating to it; and/or (e) respond and/or raise general queries relating to the Deliverables.
- 15.2 Each party will Process such Personal Data relating to the other party's representatives for the purposes set out in clause 15 in accordance with their respective privacy policies.
- 15.3 Where and to the extent that a party may Process Personal Data for and on behalf of the other party as part of the Contract, that party will be deemed the Processor and the other party will be deemed the Controller for the purpose of Data Protection Laws.
- 15.4 The Processor will comply with the obligations imposed under the Data Protection Laws and will co-operate with the other party and take all such action as are necessary to enable the other party to comply with its obligations under the Data Protection Laws and will not perform its obligations under the Contract in such a way as to cause the other party to breach any of its obligations under the Data Protection Laws, expressly and without limitation:
- 15.4.1 the parties will agree and document the nature of the Processing in accordance with Article 28(3), and otherwise the Processor will comply with the obligations set out in Article 28(2), (3), and (4) of the GDPR, any other duties as set out in the Data Protection Act 2018;
 - 15.4.2 the parties will ensure that sufficient and appropriate technical and organisational security measures are in place to comply with the obligations imposed on the Controller/Processor by the Data Protection Laws;
 - 15.4.3 no Personal Data will be transferred outside the United Kingdom without the express approval of the Controller;
 - 15.4.4 subject to clause 15.4.3, any international transfer of Personal Data will be subject to the Article 46 GDPR Standard Contractual Clauses;



15.4.5 notification of any security breach, or breach of the Data Protection Laws by the Processor will be made promptly and no later than 24 hours after the Processor became aware of such incident.

15.5 Subject to clause 15.4, the parties acknowledge that they may be required to share Personal Data with their Affiliates, within or outside of the EEA, in order to carry out the activities listed in clause 15, and in doing so each party will ensure that the sharing and use of this Personal Data complies with applicable Data Protection Laws.

16. **CONFIDENTIALITY**

16.1 The parties will keep confidential all Confidential Information of the other party and will use the same only as required to perform the Contract. The provisions of this clause will not apply to:

16.1.1 any information which was in the public domain at the date of the Contract;

16.1.2 any information which comes into the public domain subsequently other than as a consequence of any breach of the Contract or any related agreement;

16.1.3 any information which is independently developed by the receiving party without using information supplied by the disclosing party; or

16.1.4 any disclosure required by law or a regulatory authority or otherwise by the provisions of the Contract.

16.2 This clause will remain in force for a period of five years from the date of the Contract and, if longer, three years after termination of the Contract.

16.3 The Supplier will not make any public announcement or disclose any information regarding the Contract without the prior written consent of Brush, except to the extent required by law or regulatory authority.

17. **INDEMNITY**

17.1 The Supplier will indemnify, and keep indemnified, Brush from and against any losses, damages, liability, costs (including legal fees) and expenses which Brush may suffer or incur directly or indirectly arising from or as a result of any:

17.1.1 alleged or actual infringement by the Supplier of a third party's Intellectual Property Rights or other rights in connection with the supply or performance or manufacture of the Deliverables under the Contract ("**IPR Claim**");

17.1.2 claim made against Brush by a third party (including Brush's employees, agents or customers) in respect of any losses, damages, liability, costs and expenses sustained by them as a result of, or arising from, or caused by, the Deliverables or from a direct or indirect breach or negligent performance or failure or delay in performance of the Contract by the Supplier;

17.1.3 defects in materials, quality, workmanship or performance of the Deliverables;

17.1.4 claim brought by a third party (including any regulators) against Brush and which arise from or, as a result of, the Supplier breaching any of the terms included in clause 13.

17.2 If any IPR Claim is made or is reasonably likely to be made against Brush, the Supplier will promptly and at its own expense either:

17.2.1 procure for Brush the right to continue using and possessing the relevant Deliverables; or



- 17.2.2 modify or replace the infringing part of the Deliverables and without adversely affecting the functionality of the Deliverables as set out in the Contract so as to avoid the infringement or alleged infringement,

provided that if, having used reasonable endeavours, neither of the above can be accomplished on reasonable terms, the Supplier will (without prejudice to the indemnity above) refund the price paid by Brush in respect of the affected Deliverables.

18. **INSURANCE**

- 18.1 During the term of the Contract and for a period of seven years thereafter, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance, public liability insurance and such other insurance as a prudent Supplier would consider reasonable to cover the liabilities that may arise under or in connection with the Contract.
- 18.2 The Supplier will, on Brush's request, produce both the insurance certificate giving details of cover and reasonable evidence of the maintenance of the insurance and all of its terms from time to time applicable.

19. **LIMITATION OF LIABILITY**

- 19.1 The extent of the parties' liability under or in connection with the Contract (regardless of whether such liability arises in tort, contract or in any other way and whether or not caused by negligence or misrepresentation) will be as set out in this clause 19.
- 19.2 Notwithstanding any other provision of the Contract, the liability of the parties will not be limited in any way in respect of the following:
- 19.2.1 death or personal injury caused by negligence;
 - 19.2.2 fraud or fraudulent misrepresentation;
 - 19.2.3 any other losses which cannot be excluded or limited by Applicable Law.
- 19.3 Subject to clause 19.2, Brush's total liability will not exceed the total Price paid or payable by Brush to the Supplier under the Contract.
- 19.4 Subject to clauses 19.2 and 19.6, the Supplier's total liability will not exceed 300% of all Prices paid and which may become payable by Brush to the Supplier under or in connection with the Contract. For the purposes of this clause, Prices "which may become payable" shall include all amounts which have not yet been invoiced by the Supplier, any invoices which have not yet been paid by Brush, and the anticipated total spend by Brush under the Contract.
- 19.5 Subject to clause 19.2, Brush will not be liable for consequential, indirect or special losses.
- 19.6 The limitations of liability set out in clause 19.4 will not apply in respect of any indemnities given by the Supplier under the Contract.
- ## 20. **TERMINATION**
- 20.1 Brush may terminate the Contract at any time by giving notice in writing to the Supplier if:
- 20.1.1 the Supplier commits a material breach of the Contract and such breach is not remediable;
 - 20.1.2 the Supplier commits a material breach of the Contract which is not remedied within 30 days of receiving written notice of such breach;



20.1.3 any consent, licence or authorisation held by the Supplier is revoked or modified such that the Supplier is no longer able to comply with its obligations under the Contract or Brush will not receive any benefit to which it is entitled under the Contract;

20.1.4 the Supplier:

- (a) stops carrying on all or a significant part of its business, or indicates in any way that it intends to do so;
- (b) is unable to pay its debts either within the meaning of section 123 of the Insolvency Act 1986 or if Brush reasonably believes that to be the case;
- (c) becomes the subject of a company voluntary arrangement under the Insolvency Act 1986;
- (d) becomes subject to a moratorium under Part A1 of the Insolvency Act 1986;
- (e) becomes subject to a restructuring plan under Part 26A of the Companies Act 2006;
- (f) becomes subject to a scheme of arrangement under Part 26 of the Companies Act 2006;
- (g) has a receiver, manager, administrator or administrative receiver appointed over all or any part of its undertaking, assets or income;
- (h) has a resolution passed for its winding up;
- (i) has a petition presented to any court for its winding up or an application is made for an administration order, or any winding-up or administration order is made against it;
- (j) is subject to any procedure for the taking control of its goods that is not withdrawn or discharged within seven days of that procedure being commenced;
- (k) has a freezing order made against it;
- (l) is subject to any recovery or attempted recovery of items supplied to it by a supplier retaining title in those items;
- (m) is subject to any events or circumstances analogous to those in clauses 20.1.4(a) to 20.1.4(l) in any other relevant jurisdiction.

20.2 The Contract may be terminated at any time by Brush giving not less than three months' written notice to the Supplier.

20.3 The Supplier must notify Brush in writing as soon as reasonably possible before the occurrence of a change of Control of the Supplier.

20.4 Brush may terminate the Contract at any time by giving not less than three months' notice in writing to the Supplier if the Supplier undergoes a change of Control. Brush will not have a right to terminate the Contract to the extent that the relevant procedure is entered into for the purpose of amalgamation, reconstruction or merger (where applicable) where the amalgamated, reconstructed or merged party agrees to adhere to the Contract.

20.5 In the event that, at the time the Contract comes into existence or at any moment thereafter, any laws, regulations or restrictions of any kind imposed by any government or any organization of which a government is a member, substantially adversely affect a party or its Affiliates as a direct result of the performance of the Contract, the parties shall seek in good faith to find a mutually acceptable



solution to minimize such adverse effects. In the absence of a mutually acceptable solution, each party, reserves the right to terminate the Contract and the other party agrees that it shall not be considered a breach of the Contract and hence it shall have no legal cause of action, and hereby waives any right to assert the same.

- 20.6 If the Supplier becomes aware that any event has occurred, or circumstances exist, which may entitle Brush to terminate the Contract under this clause 20, it will immediately notify Brush in writing.
- 20.7 Termination or expiry of the Contract will not affect any accrued rights and liabilities of Brush at any time up to the date of termination.
- 20.8 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

21. **FORCE MAJEURE**

- 21.1 A party will not be liable if it is delayed in or prevented from performing its obligations under this Contract as a result of Force Majeure, provided that (i) it promptly notifies the other party of the Force Majeure event and its expected duration; and (ii) it uses best endeavours to minimise the effects of that Force Majeure event.
- 21.2 If the Force Majeure event continues for a period of more than 30 days, the unaffected party may terminate the Contract on immediate notice.

22. **DISPUTE RESOLUTION**

- 22.1 Any dispute arising between the parties out of or in connection with the Contract will be dealt with in accordance with the provisions of this clause 22.
- 22.2 The dispute resolution process may be initiated at any time by either party serving a written notice to the other party. The notice will include reasonable information as to the nature of the dispute.
- 22.3 The parties will use all reasonable endeavours to reach a negotiated resolution within ten Business Days of service of the notice, the contract managers of each of the parties will meet to discuss the dispute and attempt to resolve it. If the dispute has not been resolved within ten Business Days of the first meeting of the contract managers, then the matter will be referred to the chief financial officers (or persons of equivalent seniority) of each of the parties. The chief financial officers (or equivalent) will meet within ten Business Days to discuss the dispute and attempt to resolve it.
- 22.4 If the dispute has not been resolved within ten Business Days of the first meeting of the chief financial officers (or equivalent), either party may refer the dispute for arbitration to the London Court of International Arbitration by giving written notice to the other party.
- 22.5 The parties will work together to agree the appointment of an arbitrator who shall be a solicitor or barrister or arbitrator recognised by the Chartered Institute of Arbitrators. If the parties are unable within fourteen (14) days of their first meeting for this purpose to agree the identity of the arbitrator, either party may request the President as at that time of the Chartered Institute of Arbitrators to make the appointment.
- 22.6 The arbitration is to be held in London, in the English language, England will be the seat of arbitration, and the arbitration will be governed by the provisions of the Arbitration Act 1996.
- 22.7 The award of the arbitrator will be final and binding subject to section 69 of the Arbitration Act 1996.
- 22.8 Unless the Contract has already been repudiated or terminated, the parties will continue to carry out their obligations in accordance with the Contract.
- 22.9 Nothing in this Contract shall prevent:



- 22.9.1 Brush taking action in any court in relation to any death or personal injury arising or allegedly arising in connection with the performance of the Contract; or
- 22.9.2 Brush seeking from any court any interim or provisional relief that may be necessary to protect Brush's rights or property or the security of Brush's Confidential Information, pending resolution of the relevant dispute in accordance with this clause 22.

23. NOTICES

Any notice given by a party under these Conditions will be sent to the other party's registered address at that time and must be given (i) by hand (in which case it will be deemed received on receipt of a signature); or (ii) by first-class post or other method of recorded delivery (in which case it will be deemed delivered on the second Business Day after posting). A notice given under this Contract is not valid if sent by email. This clause does not apply to notices given in legal proceedings or arbitration.

24. GENERAL

24.1 Entire agreement:

- 24.1.1 The parties agree that the Contract constitutes the entire agreement between them and supersedes all previous agreements, understandings and arrangements between them, whether in writing or oral in respect of its subject matter.
- 24.1.2 Each party acknowledges that it has not entered into the Contract in reliance on, and will have no remedies in respect of, any representation or warranty that is not expressly set out in the Contract. No party will have any claim for innocent or negligent misrepresentation on the basis of any statement in the Contract.
- 24.1.3 Nothing in these Conditions purports to limit or exclude any liability for fraud.

24.2 **Variation:** No variation of the Contract will be valid or effective unless it is in writing, refers to the Contract and these Conditions and is duly signed or executed by, or on behalf of, each party.

24.3 **Assignment:** The Supplier may not assign, subcontract or encumber any right or obligation under the Contract, in whole or in part, without Brush's prior written consent, which it may withhold at its absolute discretion.

24.4 Severance:

- 24.4.1 If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of the Contract will not be affected.
- 24.4.2 If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable but would be legal, valid and enforceable if some part of it was deleted or modified, the provision or part-provision in question will apply with the minimum such deletions or modifications as may be necessary to make the provision legal, valid and enforceable. In the event of such deletion or modification, the parties will negotiate in good faith in order to agree the terms of a mutually acceptable alternative provision.

24.5 Waiver:

- 24.5.1 No failure, delay or omission by a party in exercising any right, power or remedy provided by law or under the Contract will operate as a waiver of that right, power or remedy, nor will it preclude or restrict any future exercise of that or any other right, power or remedy.



- 24.5.2 No single or partial exercise of any right, power or remedy provided by law or under the Contract by a party will prevent any future exercise of it or the exercise of any other right, power or remedy by that party.
- 24.5.3 A waiver of any term, provision, condition or breach of the Contract by a party will only be effective if given in writing and signed by that party, and then only in the instance and for the purpose for which it is given.
- 24.6 **Set off:** Brush will be entitled to set-off under the Contract any liability which it has or any sums which it owes to the Supplier under the Contract or under any other contract which Brush has with the Supplier.
- 24.7 **No partnership or agency:** The parties are independent persons and are not partners, principal and agent or employer and employee and the Contract does not establish any joint venture, trust, fiduciary or other relationship between them, other than the contractual relationship expressly provided for in it. None of the parties will have, nor will represent that they have, any authority to make any commitments on the other party's behalf.
- 24.8 **Cumulative remedies:** Brush's rights and remedies provided in the Contract are cumulative and not exclusive of any rights and remedies provided by law.
- 24.9 **Time:** Unless stated otherwise, time is of the essence for any date or period specified in the Contract.
- 24.10 **Further assurance:** The Supplier will, at the request of Brush and at the Supplier's own cost, do all acts and execute all documents which are necessary to give full effect to the Contract.
- 24.11 **Equitable relief:** The parties recognise that any breach or threatened breach of the Contract may cause the other party irreparable harm for which damages may not be an adequate remedy. Accordingly, in addition to any other remedies and damages available to the non-defaulting party, the non-defaulting party is entitled to the remedies of specific performance, injunction and equitable relief.
- 24.12 **Compliance with law:** The Supplier will comply with Applicable Law and will maintain such licences, authorisations and all other approvals, permits and authorities as are required from time to time to perform its obligations under or in connection with the Contract.
- 24.13 **Third party rights:**
- 24.13.1 Except as expressly provided for in clause 24.13.2, a person who is not a party to the Contract will not have any rights to enforce any of the provisions of the Contract.
- 24.13.2 Any Affiliate of Brush will be entitled to enforce any of the provisions of the Contract. The consent of any such Affiliate is not required in order to rescind or vary the Contract or any provision of it.
- 24.14 **Payment of Living Wage:** where the Supplier, or any of its supply chain, is based in the United Kingdom, the Supplier shall ensure that all Supplier Personnel who are engaged in the provision of the Deliverables from time to time are paid the Living Wage. Where the Supplier, or any of its supply chain, is based outside the United Kingdom and the relevant jurisdiction operates a scheme similar to the Living Wage (where such scheme provides for the payment of wages in excess of any legal minimum wage) ("**Living Wage Equivalent**"), the Supplier shall ensure that all Supplier Personnel who are engaged in the provision of the Deliverables from time to time are paid the Living Wage Equivalent. A breach of this clause 24.14 is a material breach of the Contract.
- 24.15 **Governing law:** The Contract and any dispute or claim arising out of, or in connection with, it, its subject matter or formation (including non-contractual disputes or claims) will be governed by, and construed in accordance with, the laws of England and Wales.



24.16 **Jurisdiction:** The parties irrevocably agree that the courts of England and Wales will have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, the Contract, its subject matter or formation (including non-contractual disputes or claims).

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