

Terms and Conditions for Sale of Goods and Services

Rev. 2023:1

NOTICE: Sale of any Goods or Services is expressly conditioned on Purchaser's agreement to these Terms and Conditions. Any acceptance of BRUSH's offer is expressly limited to acceptance of these Terms and Conditions and BRUSH expressly objects to any additional or different terms proposed by Purchaser. Any Order to perform work and BRUSH's performance of work shall constitute Purchaser's agreement to these Terms and Conditions. Unless otherwise specified in the Quotation, BRUSH's Quotation shall expire 15 days from its date and may be modified or withdrawn by BRUSH before receipt of Purchaser's acceptance. Purchaser's attention is particularly drawn to the provisions of Article 14.

1. Definitions

"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 where Goods are delivered or Services are performed. "Bribery Laws" means: (i) the Bribery Act 2010 and all other applicable UK legislation, statutory instruments and regulations in relation to bribery or corruption; (ii) the Foreign Corrupt Practices Act of 1977; and any similar or equivalent Applicable Law in any other relevant jurisdiction.

"BRUSH" means Brush Transformers Limited, a company incorporated in England and Wales with company number 00589650 and whose registered office address is Nottingham Road, Loughborough, Leicestershire, United Kingdom, LE11 1EX OR Hawker Siddeley Switchgear Limited, a company incorporated in England and Wales with company number 00370559 and whose registered office address is Nottingham Road, Loughborough, Leicestershire, United Kingdom, LE11 1EX, the entity to be specified in the Contract, and the legal successors in title to BRUSH, with any of their co-ventures, sub-contractors of any tier or affiliates and employees (including agency personnel), directors, officers and agents of any of the foregoing.

"Cancellation Table" means the cancellation table set out in the Quotation and which sets out the sums that the parties agree will be reasonably due to BRUSH in the event the Contract is terminated for convenience.

"Completed" shall be the time when: (i) Goods are delivered (delivered/collected/deemed to have been delivered/collected) pursuant to the Contract (where Works cover the supply of Goods only); or (ii) Services are completed (where Works cover the supply of Services with or without Goods).

"Terms and Conditions" mean the terms and conditions as set out herein except as otherwise agreed in writing between the parties.

"Contract" means the agreement between BRUSH and Purchaser for the execution of Works made of: Order Acknowledgement, Quotation, Terms and Conditions, Order and Specification.

"Contract Price" means the sum stated in the Contract as being the Contract Price, as may be amended from time to time in accordance with the provisions of the Terms and Conditions plus, in the case of work being undertaken (either in part or in the whole) on a chargeable day rate basis, the sum total of all such chargeable work carried out by BRUSH under the Contract.

"Controller" shall have the meaning given in the Data Protection Legislation.

"Data Protection Legislation" means all applicable statutes, laws, secondary legislation, rules, regulations and guidance from the Information Commissioner's Office relating to the protection of Personal Data, including the UK GDPR and the Data Protection Act 2018.

"Delivery Point" shall mean the place or places to which Goods shall be delivered in accordance with the Contract.

"Due Date" shall mean the date by when the execution or delivery (as the case may be) of the Works or Section thereof, shall be Completed pursuant to the Contract.

"Engineering Freeze Date" shall mean the date, pursuant to Article 5.2, by which Purchaser shall have provided BRUSH with all necessary essential engineering information as BRUSH shall reasonably require.

"Free Issue Material" means material issued free of charge by Purchaser to BRUSH to be used in the production or manufacture of Goods provided by BRUSH under the Contract.

"Force Majeure" means war, hostilities, (whether war be declared or not), acts of terrorism, riots or civil disorder, industrial disputes, acts of God, pandemic, epidemic or any other circumstances beyond the reasonable control of either Party.

"Goods" shall include but not be limited to machinery, apparatus, materials, articles, consumables and all other things to be supplied by BRUSH in accordance with the Contract but excluding Provisions and Services.

"Group" shall mean in relation to a company (wherever incorporated), that company, any company of which it is a Subsidiary from time to time (its holding company) and any other Subsidiaries from time to time of that company or its holding company.

"Intellectual Property Rights" shall mean all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

"Insolvent/Bankrupt" means that a party is insolvent, makes an assignment for the benefit of its creditors, has a receiver or trustee appointed for it or any of its assets, or files or has filed against it a proceeding under any bankruptcy, insolvency dissolution or liquidation laws.

"MSA" means the Modern Slavery Act 2015 and/or any similar or equivalent Applicable Law in any other relevant jurisdiction.

"Order" shall mean Purchaser's order for the Works.

"Order Acknowledgement" shall mean BRUSH's formal written acceptance of the Order and which is marked as being the "Order Acknowledgement".

"Personal Data" shall have the meaning given in the Data Protection Legislation.

"Plant" shall mean any piece or pieces of plant, owned by Purchaser or a third party as defined in the Contract, upon which Services are to be carried out.

"Processor" shall have the meaning given in the Data Protection Legislation.

"Provisions" shall mean any temporary stores, tackle, test equipment and other things brought upon the Site from time to time by BRUSH and required thereon for the purposes of carrying out the Services but not for incorporation therein. The term excludes Goods and Services.

"Purchaser" shall be the party named in the Contract as such and the legal successors in title to Purchaser but not (except with the consent of BRUSH) any assignee of Purchaser.

"Quotation" shall mean BRUSH's quotation for the Works.

"Section" shall mean the parts, if more than one, into which the Works shall be divided pursuant to the Contract.

"Serviced Plant" shall mean Plant upon which work has been carried out by the Site Staff, either at the Site or in the Workshop, pursuant to the Contract.

"Services" shall include but not be limited to Surveying, Training, installation, erection, testing, pre-commissioning, final commissioning, supervisory services, servicing, repair, modification, adjustment, reconfiguration, reconstruction, reinstatement or testing etc. of the Goods and/or Plant and which shall be undertaken by Site Staff at the Site or in the Workshop in the performance of the Contract.

"Site" shall mean the place or places, excluding the Workshop, at which Services are to be undertaken by BRUSH together with so much of the area surrounding such place or places as BRUSH shall with Purchaser's consent use in connection with the Services otherwise than merely for the purpose of access to such place or places.

"Site Services" shall mean any Services which are installation services and/or testing and/or cold commissioning services.

"Site Staff" shall mean such personnel, including but not limited to BRUSH's own servants or agents or those of any Subsidiary or associated company, as BRUSH shall deem necessary to undertake the Services.

"Specification" shall mean any specification for the Works (including any related plans and drawings) that is agreed in writing between BRUSH and Purchaser.

"Subsidiary" shall mean in relation to a company wherever incorporated (a holding company), any company in which the holding company (or persons acting on its behalf) for the time being directly or indirectly holds or controls either: a majority of the voting rights exercisable at shareholder meetings of that company; or the right to appoint or remove a majority of its board of directors, any company which is a Subsidiary of another company is also a Subsidiary of that company's holding company. Unless the context otherwise requires, in determining whether the foregoing applies to a particular company at any particular time, the rights referred to above are those rights as at that particular time.

"Surveying" shall include, but not be limited to, activities such as the viewing, assessment, measuring of and reporting upon prevailing Site and Plant arrangements, facilities and features, site and substation access routes and potential restrictions, the nature, scope and general condition of the Plant, space and mounting limitations etc. The term excludes the supply of Goods and/or any servicing, repair, modification, adjustment, reconfiguration, reconstruction, reinstatement or testing activities. Further, the term excludes structural surveys and other such surveys.

"Training" shall mean the training of Purchaser's employees or those of third parties on such products and to such extent and at such location(s) as shall be defined in the Contract.

"UK GDPR" shall have the meaning given to it in the United Kingdom's Data Protection Act 2018.

"Warranty Period" shall be the period stated in Article 7.

"Works" shall mean such Goods and/or Services as are to be supplied, provided or undertaken by BRUSH pursuant to the Contract.

"Workshop" shall mean such of BRUSH's premises as may be used from time to time by Site Staff pursuant to the Contract.

2. Basis of Contract

- 2.1 The Contract shall constitute the entire agreement between the parties in respect of its subject matter and shall supersede all prior agreements, quotation requests, understandings, representations, warranties, promises, statements, negotiations, letters and documents in respect of its subject matter (if any) made or given prior to the date of the Contract. Purchaser acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of BRUSH which is not set out in the Contract. Unless otherwise agreed, all advertising material (in any form), samples, descriptive and shipping specifications, drawings, and

particulars of weights and dimensions submitted by BRUSH prior to the Contract coming into effect are deemed to have been issued or published for the sole purpose of giving Purchaser an approximate idea of the Works. Such data shall not form part of the Contract or any other contract between BRUSH and Purchaser.

- 2.2 The Order constitutes an offer by Purchaser to purchase Goods or Services or Goods and Services in accordance with these Terms and Conditions.
- 2.3 Unless stated otherwise in the Quotation, in the event of any conflict or inconsistency between the documentation, the following parts of the Contract shall take precedence in the following order: Order Acknowledgement; Quotation; Terms and Conditions; Order; and Specification.

3. Payment

- 3.1 Purchaser shall pay BRUSH for the Goods and Services by paying all invoiced amounts in GBP, without set-off for any payment from BRUSH not due under this Contract, within thirty (30) days from the invoice date. For each calendar month, or fraction thereof, that payment is late, Purchaser shall pay a late payment charge computed at the rate of 4% per month on the overdue balance, or the maximum rate permitted by law, whichever is less.
- 3.2 If Purchaser shall fail to make any payment as provided in this Article, BRUSH shall be at liberty, without prejudice to any other remedy, after giving to Purchaser fourteen (14) calendar days' notice in writing of its intention to do so, to suspend the Contract or any Section thereof until the said payment be made. Any expenses incurred by BRUSH arising by virtue of the suspension and the subsequent resumption of work shall be added to the Contract Price.
- 3.3 All sums payable by Purchaser under the Contract shall be paid free and clear of all deduction or withholdings unless the deduction or withholding is required by law, in which event Purchaser shall pay such additional amount as shall be required to ensure that the net amount received by BRUSH will equal the full amount which would have been received had no such deduction or withholding been required to be made.
- 3.4 Where Goods are supplied to non-UK companies under FCA terms, the supply is treated as zero rated for UK VAT purposes. BRUSH reserves the right to charge UK VAT at the applicable rate should Purchaser, or its appointed agent, fail to follow BRUSH's instructions and/or provide the necessary evidence of export.
- 3.5 Where BRUSH provides Services that are considered to be building and construction services, for the purposes of VAT Act 1994 Section 55A reverse charge for building and construction services, BRUSH shall assume Purchaser is an End User or Intermediary Supplier unless the Purchaser informs BRUSH in writing that this is not the case and that Purchaser will account for the reverse charge.
- 3.6 BRUSH reserves the right, by giving notice to Purchaser at any time before delivery, to increase the Contract Price to reflect any increase in the cost to BRUSH which is due to any factor beyond the control of BRUSH including any foreign exchange fluctuations, currency regulation, alteration of duties, increase in the costs of labour, materials or other costs of manufacture, any change in delivery dates, quantities or Specification for the Goods and Services which are requested by Purchaser, changes in Applicable Law or any delay caused by any instructions of Purchaser or delay of Purchaser to give BRUSH adequate information or instructions.
- 3.7 If at any time BRUSH reasonably determines that Purchaser's financial condition or payment history does not justify continuation of BRUSH's performance, BRUSH shall be entitled to require full or partial payment in advance or otherwise restructure payments, request forms of payment security (irrevocable, unconditional, sight letter of credit or bank guarantee allowing for pro-rata payments as Goods are shipped and Services are performed, plus payment of cancellation and termination charges, and all other amounts due from Purchaser under the Contract), suspend its performance or terminate the Contract.

4. Deliveries; Title Transfer; Risk of Loss; Storage

- 4.1 Unless otherwise expressly stated in the Contract: (i) Risk in Goods shall pass to Purchaser upon delivery in accordance with the Incoterm agreed in the Contract; (ii) Risk in Plant and/or Serviced Plant shall remain with Purchaser at all times save where such is in the Workshop in which case risk is in such Plant and/or Serviced Plant shall be with BRUSH and remain so until such time as it is subsequently returned to Site whereupon risk shall re-vest in Purchaser; (iii) risk in Free Issue Material shall pass to BRUSH on delivery and shall re-vest in Purchaser when the Free Issue Material is returned to Purchaser or Purchaser's nominee (whether as part of Goods or otherwise).
- 4.2 Unless otherwise expressly stated in the Contract: (i) where Purchaser is based in the United Kingdom, title to the Goods shall pass to Purchaser on delivery; (ii) where Purchaser is based outside the United Kingdom, title to the Goods shall pass to Purchaser at the point at which the Goods leave the United Kingdom prior to importation in the country of destination.
- 4.3 Free Issue Material will be delivered to BRUSH in UK free circulation (free of customs duties and liabilities). BRUSH will not be responsible for the customs clearance of any equipment supplied from non-UK locations. Where Goods containing Free Issue Material are sent to a non-UK location, Purchaser will be responsible for ensuring the correct valuation for customs clearance is declared in the country of destination. Title to the Free Issue Material shall remain with Purchaser at all times.
- 4.4 Should Purchaser fail to take delivery of any Goods within ten (10) calendar days of BRUSH informing the Purchaser that the Goods are ready to be dispatched / collected (as applicable), or should the Purchaser at any time ask BRUSH to store the Goods, the following provisions will apply: (i) BRUSH shall have the right to charge Purchaser for storage fees and any costs and expenses arising out of or in connection with such failure / request; (ii) delivery of the Goods shall be deemed to have occurred on the tenth (10th) calendar day after the date on which BRUSH informed the Purchaser that the Goods are ready to be dispatched / collected (as applicable) ("Deemed Delivery Date"); (iii) BRUSH shall be entitled to invoice for completed Goods as though they had been delivered; (iv) any Warranty Period relating to the Goods shall be deemed to have commenced with effect from the Deemed Delivery Date; (v) any other provisions of the Contract which are said to come into effect on or after delivery (including passage of title and risk) shall be deemed to have come into effect as of the Deemed Delivery Date; (vi) where Purchaser is not established in the UK, UK VAT at the prevailing rate will be payable on the full value of the Goods and the costs of storage following a period of three (3) months in storage.
- 4.5 In such circumstances where Purchaser has failed to take delivery of any Goods within ten (10) calendar days of BRUSH informing Purchaser that the Goods are ready to be dispatched / collected (as applicable) or where Purchaser has asked BRUSH to store the Goods, immediately following the application of Article 4.4, risk in the Goods shall be transferred back to BRUSH until such time as the Purchaser takes possession and control of the Goods.

5. Supply of Information to BRUSH

- 5.1 Purchaser shall provide BRUSH with all necessary information that BRUSH may reasonably require from time to time to permit BRUSH to proceed uninterruptedly with the Contract.
- 5.2 If deemed necessary by BRUSH, the Contract provisions shall include an Engineering Freeze Date.
- 5.3 The period of time during which Purchaser shall approve and/or comment upon drawings and documents submitted by BRUSH for Purchaser's approval shall be ten (10) calendar days unless otherwise expressly stated in the Contract.
- 5.4 In the event that the Contract is delayed, in part or in the whole, by reason of delay in the provision by Purchaser of the necessary information or to changes in such information, or the extent of the Contract is increased thereby, BRUSH shall be entitled to amend the Contract Price to compensate it for any additional costs that it may have reasonably or properly incurred and to extend the Due Date by such period as may be reasonable in all the circumstances.
- 5.5 Purchaser shall provide BRUSH with details of the end destination / end user of the Goods. BRUSH may, where Purchaser is a corporate entity, contact the end user of the Goods from time to time to ascertain if any further assistance is required from BRUSH. The end user of the Goods may at any time opt out of such communication (provided that such opt out does not apply to the performance of the Contract or the obligations hereunder).

6. Liability for Delay

- 6.1 Any times quoted for the Works to be Completed by Due Date are approximate only and time shall not be deemed to be of the essence of the Contract.
- 6.2 If work pursuant to the Contract is not Completed by Due Date or any extension thereto due to BRUSH's own fault then where the Due Date is stated in the Contract to be fixed, BRUSH undertakes to pay, in full satisfaction of its liability for the delay, for each week of delay liquidated and ascertained damages at the rate of 0.5 per cent of the value of such parts of the Works as are delayed up to a total maximum of 5.0 per cent of the value of such parts of the Works as are delayed and where Purchaser can demonstrate they have suffered loss. The obligation to pay liquidated damages shall be Purchaser's sole and exclusive remedy in case of any delay in the performance of the Contract. A two (2) week grace period after the Due Date shall apply before the application of any liquidated damages under this Article 6.

7. Warranty

- 7.1 BRUSH shall have no liability under this Article 7 for activities undertaken during Surveying and/or Training.
- 7.2 BRUSH warrants that Goods shall be delivered free from defects in material, workmanship and title and that Services shall be performed in a competent, diligent manner in accordance with the Specification.
- 7.3 BRUSH's sole liability to Purchaser under this Article 7 shall be to make good by re-performance, repair or replacement as BRUSH may reasonably determine and, save as herein after stated, at its own expense, any defect in any part of the Works which may appear or occur during the Warranty Period being: (i) where the scope of the Works is limited to the supply of engineering documentation and drawings only, thirty (30) calendar days from the date that such are delivered pursuant to the Contract; or (ii) where the scope of the Works is for the

supply of Goods without Services, twelve (12) months from the notification of readiness to despatch; or (iii) where the scope of the Works is for the supply of both Goods and Services (where the purpose of the Services is to install the Goods), twelve (12) months from the completion of commissioning or eighteen (18) months from notification of readiness to despatch, whichever is earlier; or (iv) where the scope of the Works is limited to the supply of Services only, twelve (12) months from the date when the Works or Section thereof are Completed.

- 7.4 BRUSH shall not be liable for any defects in or damage to any part of the Works arising from circumstances which are, or which are deemed to be, beyond its reasonable control including but not limited to: (i) failure of Purchaser or any third party to follow BRUSH's oral or written instructions (including as may be set out in any operational manuals) as to the storage, installation, commissioning, use, operation or maintenance of the Works or (if there are none) good trade practice; or (ii) BRUSH following any drawing, design or specification supplied by Purchaser; or (iii) installation of the Goods in an unsuitable environment; or (iv) willful damage or negligence of Purchaser, or any other act or omission on the part of Purchaser, its employees or agents or any third party; or (v) mishandling or mis-use of the Works by Purchaser or any third party; or (vi) impact with other objects, dropping or falls; or (vii) alterations or repairs to the Works not carried out or authorised by BRUSH; or (viii) accident, abuse, fair wear and tear, misuse or neglect; or (ix) natural disasters such as fires, floods or lightning; or (x) the use of any Free Issue Material; or (xi) the use of parts, components, services or software not supplied or authorised by BRUSH.
- 7.5 Consumable items including, but not limited to, indicating lamp bulbs and fuse cartridges/links are excluded from this warranty obligation.
- 7.6 Purchaser shall, in the first instance, report any defect to BRUSH's Customer Support Department.
- 7.7 Purchaser shall bear the cost of access for BRUSH's remedial Warranty efforts (including removal and replacement of any equipment or other parts of the Plant), de-installation, re-installation and transportation of defective Goods to BRUSH and back to Purchaser. In the event that the defect is not due to BRUSH's default then Purchaser shall be liable for the full costs of any inspections and/or surveys undertaken by BRUSH, whether at Purchaser's premises or elsewhere, plus the full costs of all necessary remedial work and associated costs, including but not limited to, delivery or re-delivery of repaired or replaced items.
- 7.8 The provisions of this Article 7 shall apply in the same measure to any repairs and/or replacement items supplied by BRUSH but not so as to extend the Warranty Period by more than twelve (12) months from the date of repair or replacement.
- 7.9 BRUSH shall also be responsible for making good any defect to which this Article applies which may develop in any Goods supplied pursuant to the Contract during the period of 3 years ("Latent Defect Warranty Period") immediately following delivery of such Goods, provided always that such defect: (i) would not have been disclosed by a reasonable visual examination prior to the expiry of the Warranty Period; and (ii) had a material adverse effect on the performance of the Goods; and (iii) was not caused by the failure of Purchaser to operate and maintain the Goods in accordance with BRUSH's operation and maintenance manuals; and (iv) was caused by BRUSH's "gross misconduct" (any act or omission on the part of BRUSH implying either a failure to pay due regard to serious consequences which a conscientious organisation would normally foresee as likely to ensue or a deliberate disregard of any consequences of such act or omission but does not comprise any and every lack of proper care or skill).
- 7.10 This Article 7 provides the exclusive remedies for all claims based on failure of or defect in Goods or Services, regardless of whether the failure or defect arises, and whether a claim, however described, is based on contract, warranty, indemnity, tort/extra-contractual liability (including negligence), strict liability or otherwise. The warranties provided in this Article 7 are exclusive and are in lieu of all other warranties, conditions and guarantees whether written, oral, implied or statutory. **NO IMPLIED OR STATUTORY WARRANTY, OR WARRANTY OR CONDITION OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE APPLIES.**

8. Confidentiality and Data Protection

- 8.1 A party ("Receiving Party") shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of confidential nature and have been disclosed to the Receiving Party by the other party ("Disclosing Party"), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors ("Representatives") as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract and/or enforcing its rights under the Contract, and shall ensure that such Representatives are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. The Receiving Party shall ensure that it and its Representatives only use the confidential information of the Disclosing Party for the purposes of exercising the Receiving Party's rights and / or discharging the Receiving Party's obligations under the Contract.
- 8.2 Article 8.1 shall not apply to: (i) information which is in the public domain otherwise than through a breach of this Article 8; or (ii) information already known to a party and not the subject of any obligation of confidentiality; or (iii) information obtained from a third party who is free to disclose the same; or (iv) information which the Receiving Party is required to disclose by: (a) an order of any court of competent jurisdiction or any regulatory, judicial, governmental or body or any taxation authority of competent jurisdiction; (b) the rules of any listing authority or stock exchange on which its shares are listed or traded; or (c) the laws or regulations of any country to which its affairs are subject.
- 8.3 Before the Receiving Party discloses any confidential information pursuant to Article 8.2 (iv) it shall, to the extent permitted by law, give the Disclosing Party as much notice of this disclosure as possible. Where notice of such disclosure is not prohibited and is given in accordance with this Article 8.3, the Receiving Party shall take into account the Disclosing Party's requests in relation to the content of this disclosure.
- 8.4 Purchaser acknowledges and agrees that BRUSH: (i) uses third party IT services in the usual course of its business; and (ii) may share the confidential information of the Purchaser with its insurers where BRUSH considers it necessary or desirable to do so; and (iii) may share confidential information of Purchaser for the purposes of internal reporting with other entities within its Group where it deems it reasonable to do so, and that such use of the Purchaser's confidential information by BRUSH shall not constitute a breach of this Article 8 by BRUSH.
- 8.5 In the performance of the Contract the parties shall comply with Data Protection Legislation. The Parties anticipate that in connection with the Contract, both Purchaser and BRUSH are each acting as an independent Controller.
- 8.6 Purchaser shall ensure that it provides all BRUSH officers, employees, consultants, contractors and sub-contractors with such information as may be required to meet the fairness and transparency obligations under Data Protection Legislation from time to time.
- 8.7 Where Purchaser is based outside the United Kingdom, Purchaser and BRUSH may enter into an International Data Transfer Agreement as provided for under the Data Protection Legislation.
- 8.8 Purchaser and BRUSH agree that in connection with the Contract, should either Purchaser or BRUSH become a Processor of Personal Data (where the other party is a Controller of such Personal Data), a data processing agreement that meets the requirements of Data Protection Legislation shall be entered into.

9. Intellectual Property

- 9.1 BRUSH retains all Intellectual Property Rights in the Works or any other work to be supplied under the Contract and whether pre-existing or developed specifically for the purposes of the Contract. Purchaser shall be granted a royalty free, non-assignable, non-transferable license to use BRUSH patents, registered designs or other like rights of all kind relevant to the Contract, only for the purposes of the installation, operation and maintenance of the Works.
- 9.2 Purchaser specifically agrees that as between Purchaser and BRUSH, any jointly created Intellectual Property Rights shall be owned by BRUSH and Purchaser will do all such things and sign all documents necessary to vest all such Intellectual Property Rights in BRUSH.
- 9.3 Purchaser on its part warrants that any design or instruction furnished or given by it shall not be such as will cause BRUSH to infringe any letters patent, registered design, trademark or copyright in the execution of the Contract.

10. Force Majeure

- 10.1 If either party is prevented or delayed in performing its contractual obligations by any Force Majeure event, it shall be excused the non-performance of such obligation provided that the Force Majeure event has been notified to the other party as soon as practicable after its occurrence.
- 10.2 If performance is delayed or prevented for a continuous period of one hundred and twenty (120) calendar days, then either party may by written notice to the other cancel the Contract. In the event of such cancellation Purchaser shall pay BRUSH for all completed Goods, delivered Services, Goods in progress and committed and for all reasonable costs, losses, expenses and charges incurred by BRUSH in the execution of the Contract up to the date of such cancellation together with the cost of removal of BRUSH's plant, materials etc. from the Site and return of such to BRUSH's premises. Such cancellation shall be without prejudice to the rights of the parties in respect of any breach of the Contract occurring prior to such cancellation.
- 10.3 Under no circumstances shall BRUSH be liable for any delay in performance of its contractual obligations arising out of or connected with a disruption in the supply of gas and/or electricity.

11. Suspension and Termination

- 11.1 Should Purchaser wish for BRUSH to suspend its performance of the Contract at any time, the following provisions shall apply:
- (i) Purchaser shall put in writing its request for BRUSH to suspend its performance of the Contract and shall send such request to the BRUSH Contracts Manager appointed to manage the Contract and the following email address [suspensions@brush.eu] (or such other email address as notified by BRUSH from time to time);
- (ii) BRUSH will evaluate the effect of any suspension on any performance dates, including Due Dates, stated within the Contract and will have the right to adjust any performance dates, including without limitation the Due Dates;
- (iii) any stage payments of the Contract Price which have been invoiced by BRUSH but which have yet to be paid by Purchaser as at the date of the request for suspension shall become immediately due and payable by Purchaser;
- (iv) Purchaser shall pay BRUSH all costs, losses, expenses and charges incurred in the performance of the Contract up to the time of its suspension;
- (v) Purchaser shall be liable for all costs and expenses arising out of or in connection with any such suspension;

(vi) BRUSH shall have the right to re-price the Contract.

This Article shall be applied accordingly in the event Purchaser suspends the Contract indirectly by not providing information necessary for BRUSH to perform the Contract or delaying any part of the Contract in any other way.

- 11.2 In the event suspension is longer than ninety (90) calendar days or any period of suspension over the life of the Contract amounts to a cumulative period in excess of ninety (90) calendar days, BRUSH shall have the right to consider the Contract to have been terminated by Purchaser for convenience. In such circumstances: (i) the provisions of 11.4 shall apply; and (ii) for the purposes of calculating the monies due to BRUSH under Article 11.4, BRUSH shall treat the date of the relevant suspension request to be the point of cancellation by the Purchaser.
- 11.3 Where suspension or termination relates to or affects Site Services, the charges for suspension/termination of Site Services, as set out in the Quotation, shall apply. When the suspended Site Services are ready to be recommenced, charges for those recommenced Site Services shall also apply (including mobilisation cost). The amount due for Site Services shall be determined in accordance with the milestone schedule (for completed milestones) and rates set forth in the Contract. Articles 11.1 and 11.2 shall apply accordingly.
- 11.4 Purchaser may terminate the Contract for convenience by giving at least thirty (30) working days prior written notice to BRUSH. In the event Purchaser terminates the Contract for convenience, BRUSH shall invoice Purchaser for all costs, losses, expenses and charges arising out of or in connection with the performance of the Contract and its cancellation. Purchaser and BRUSH hereby agree that such costs, losses, expenses and charges are properly and fairly reflected by the rates set out in the Cancellation Table which BRUSH shall apply when raising the invoice referred to in this Article.
- 11.5 BRUSH may suspend or terminate the Contract (or any affected portion thereof) immediately for cause if Buyer: (i) becomes Insolvent/Bankrupt; or (ii) materially breaches the Contract, including, but not limited to, failure or delay in Purchaser making any payment when due, or fulfilling any payment conditions.
- 11.6 If the Contract (or any portion thereof) is suspended under Article 11.5, Articles 11.1 (i), (ii), (iv), (v), (vi) and 11.3 shall apply accordingly.
- 11.7 If the Contract is terminated under Article 11.5, Purchaser shall pay BRUSH for all completed Goods, delivered Services, Goods in progress and committed and for all reasonable costs, losses, expenses and charges incurred by BRUSH in the execution of the Contract up to the date of such termination together with the cost of removal of BRUSH's plant, materials etc. from the Site and return of such to BRUSH's premises, plus expenses reasonably incurred by BRUSH in connection with the termination. The amount due for Services shall be determined in accordance with the milestone schedule (for completed milestones) and rates set forth in the Contract.

12. Compliance

- 12.1 BRUSH shall comply with laws applicable to the manufacture of Goods and the performance of Services. Purchaser shall comply with laws applicable to the application, operation, use and disposal of the Goods and Services.
- 12.2 The Contract shall be terminated if: (i) there is a change to BRUSH's obligations under national or international laws and regulations relating to sanctions, embargoes and any other trade restrictions; or (ii) it becomes unlawful for either party to perform all or any of its obligations under the Contract or under any authorisation, approval, consent, license, exemption, filing, registration or notarisatio or other requirement of any governmental, judicial or public body or authority necessary to enable either party to comply with its obligations under the Contract. Articles 10.1 and 10.2 shall apply in these circumstances accordingly with respect to the time and payment related consequences of such termination.
- 12.3 Purchaser shall not – directly or indirectly – sell, provide, export, re-export, transfer, divert, loan, lease, consign, or otherwise release or dispose of any equipment, product, commodities, services, software, source code, or technology subject to the Contract to or via any individual, entity, or destination, or for any use prohibited by the Applicable Law without having obtained prior authorization from the competent governmental authorities as required by the Applicable Law.
- 12.4 In case BRUSH shall be responsible under Applicable Law for applying for necessary export licenses required to perform delivery of Goods and/or Services, Purchaser shall fully co-operate with BRUSH to furnish all relevant information and details about Purchaser and its operations including the provision of end user certificates or other documentation that may be required by the appropriate licensing authority. BRUSH shall use reasonable endeavours to ensure that all relevant export licenses are granted so as to meet the time schedule for the performance of the Contract. However, BRUSH shall not be liable for any failure to obtain said licenses in a timely manner, or at all.
- 12.5 Notwithstanding any other provision, Purchaser shall timely obtain, effectuate and maintain in force any required permit, license, exemption, filing, registration and other authorization, including, but not limited to, building and environmental permits, import licenses, environmental impact assessments, and foreign exchange authorizations, required for the lawful performance of Services at the Site or fulfillment of Purchaser's obligations, except that BRUSH shall obtain any license or registration necessary for BRUSH to generally conduct business and visas or work permits, if any, necessary for BRUSH's personnel. Purchaser shall provide reasonable assistance to BRUSH in obtaining such visas and work permits.
- 12.6 BRUSH shall be entitled to adjust any performance dates, including without limitation the Due Dates, in case any changes in the Applicable Laws affect the performance of the Contract.
- 12.7 In connection with the Contract, each of the Purchaser and BRUSH will, and will ensure that their respective personnel will: (i) comply with all Bribery Laws; (ii) comply with the MSA; and (iii) 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 (a) Part 3 of the Criminal Finances Act 2017 or any similar or equivalent Applicable Law in any other relevant jurisdiction; and (b) any guidance published under the same.
- 12.8 Purchaser agrees and acknowledges that it has reviewed the BRUSH compliance policies embedded within the BRUSH website at www.brush.eu/legal-quality/customer-portal/ (or access via the QR code below) and agrees: (i) that it is satisfied with the same and (ii) to abide by such policies for the duration of the Contract.



13. Changes

- 13.1 Each party may at any time propose changes in the schedule or scope of Goods or Services. BRUSH is not obligated to proceed with any change until both parties agree upon such change in writing. The written change documentation will describe the changes in scope and schedule, and the resulting changes in price and other provisions, as agreed.
- 13.2 It shall be acceptable and not considered a change if BRUSH delivers a Good that bears a different, superseding or new part or version number compared to the part or version number listed in the Contract.

14. Limitations of Liability

IN ACCEPTING THESE TERMS AND CONDITIONS, PURCHASER ACKNOWLEDGES THAT IT IS AWARE OF AND AGREES THAT THE EXCLUSIONS AND LIMITATIONS ON LIABILITY PROVIDED BY THIS ARTICLE 14 ARE REASONABLE IN THE CIRCUMSTANCES.

- 14.1 BRUSH shall not be liable to Purchaser whether as a result of breach of contract, warranty, guarantee, indemnity, strict liability, tort (including negligence) or restitution, breach of statutory duty or misrepresentation or otherwise, for any of the following damages or losses, in each case whether direct or indirect: (i) any special damages or loss; (ii) any indirect damages or loss; (iii) any consequential damages or loss; or (iv) loss of profits; or (v) loss of savings; or (vi) loss of contract such as but not limited to loss of revenue; or (vii) loss of use; or (viii) loss of power supply; or (ix) costs of capital; or (x) loss of business opportunity; or (xi) loss of reputation; or (xii) loss of time such as but not limited to wasted management time; or (xiii) any like loss howsoever incurred and/or suffered by Purchaser arising under or in connection with the Contract even if BRUSH was advised of the possibility of such loss or losses in advance.
- 14.2 Purchaser shall indemnify BRUSH against all damages, costs, claims and expenses related to loss of or damage to any equipment (including that of third parties) caused by BRUSH in performing Site Services, except to the extent caused by any negligent acts or omissions of BRUSH.
- 14.3 Subject to 14.1 and 14.2 the total aggregate liability of BRUSH to Purchaser, arising from or related to the formation, performance or breach of this Contract, or any Goods or Services, whether in contract, tort (including negligence), breach of statutory duty, or misrepresentation by way of indemnity or otherwise, shall not exceed the (i) Contract Price or (ii) if Purchaser places multiple order(s) under the Contract, the price of each particular order for all claims arising from or related to that order, except for death, personal injury, fraudulent misrepresentation or any other matter to the extent that such limitation or exclusion is not permitted by Applicable Law, where no limitation shall apply.
- 14.4 All BRUSH liability shall end upon expiration of the applicable Warranty Period, provided that Purchaser may continue to enforce a claim for which it has given notice prior to that date by commencing an action or arbitration, as applicable under this Contract, before expiration of any statute of limitations or other legal time limitation but in no event later than one year after expiration of such Warranty Period.
- 14.5 BRUSH shall not be liable for advice or assistance that is not required for the work scope under this Contract.
- 14.6 If Purchaser is supplying Goods or Services to a third party, or using Goods or Services at a facility owned by a third party, Purchaser shall either: (i) indemnify and defend BRUSH from and against any and all claims by, and liability to, any such third party in excess of the limitations set forth in this Article 14; or (ii) require that the third party agrees, for the benefit of and enforceable by BRUSH, to be bound by all the limitations included in this Article 14.
- 14.7 For the purposes of this Article 14, the term "Purchaser" means Purchaser, its affiliates, subcontractors and suppliers of any tier, and their respective employees.
- 14.8 The limitations in this Article 14 shall apply regardless of whether a claim is based in contract, warranty, indemnity, tort/extra-contractual liability (including negligence), strict liability or otherwise, and shall prevail over any conflicting terms, except to the extent that such terms further restrict BRUSH's liability.

15. Governing Law and Dispute Resolution

- 15.1 The Contract and any dispute or claim arising out of, or in connection with the Contract, 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.
15.2 Any dispute arising between the parties out of or in connection with the Contract will be dealt with in accordance with the provisions below:

- (i) 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. The parties will use all reasonable endeavours to reach a negotiated resolution.
 - (ii) Within ten (10) working 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 (10) working 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 (10) working days to discuss the dispute and attempt to resolve it.
 - (iii) If the dispute has not been resolved within ten (10) working 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.
 - (iv) 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) calendar 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.
 - (v) 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.
 - (vi) The award of the arbitrator will be final and binding subject to section 69 of the Arbitration Act 1996.
- 15.3 Subject to Article 15.2, 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).
- 15.4 Unless the Contract has already been repudiated or terminated, the parties will continue to carry out their obligations in accordance with the Contract.
- 15.5 Nothing in the Contract shall prevent 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 Article 15.

16. Inspection and Factory Tests

BRUSH will apply its normal quality control procedures in manufacturing Goods. BRUSH shall attempt to accommodate requests by Purchaser to witness BRUSH's factory tests of Goods, subject to appropriate access restrictions, if such witnessing can be arranged without delaying the work. In the event of any delay by Purchaser in attending or carrying out any factory tests, after seven (7) days' notice that Goods are ready to be tested, the tests will proceed in the absence of Purchaser and shall be deemed to have been made in the presence of Purchaser and the inspection will be deemed to have been made by Purchaser.

17. General Clauses

- 17.1 A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- 17.2 If a court or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected. If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.
- 17.3 In respect to the exporting of Goods, the provisions of the United Nations Convention on Contracts for the International Sale of Goods ("The Vienna Convention") are hereby excluded from the Contract.
- 17.4 Any notice given by a party under these Terms and 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 third (3rd) Business Day after posting). A notice given under this Contract is not valid if sent by email. This Article does not apply to notices given in legal proceedings or arbitration.
- 17.5 These Terms and Conditions are drafted in the English language. Any notice given under or in connection with the Contract shall be in English. All other documents provided under or in connection with the Contract shall be in English, or accompanied by a certified English translation. The English language version of these Terms and Conditions and any notice or other document relating to the Contract, shall prevail if there is a conflict except where the document is a constitutional, statutory or other official document.
- 17.6 BRUSH may assign or novate its rights and obligations under the Contract, in whole or in part, to any of its affiliates or may assign any of its accounts receivable under this Contract to any party without Purchaser's consent. Purchaser agrees to execute any documents that may be necessary to complete BRUSH's assignment or novation. BRUSH may subcontract portions of the work, so long as BRUSH remains responsible for it. The delegation or assignment by Purchaser of any or all of its rights or obligations under the Contract without BRUSH's prior written consent (which consent shall not be unreasonably withheld) shall be void.
- 17.7 Purchaser shall notify BRUSH immediately upon any change in ownership of more than fifty percent (50%) of Purchaser's voting rights or of any controlling interest in Purchaser. If Purchaser fails to do so, BRUSH may: (i) terminate the Contract; (ii) require Purchaser to provide adequate assurance of performance (including but not limited to payment).
- 17.8 The following Articles shall survive termination or cancellation of the Contract: 3, 4, 6, 7, 8, 9, 10, 11, 12, 14, 15, 17 and Services Appendix.
- 17.9 No third party shall have a right to enforce any provision of this Contract, whether under the English Contracts (Rights of Third Parties) Act of 1999 or otherwise.

Services Appendix

1. Health, Safety and Environment

- 1.1 Purchaser shall be responsible for providing safe systems of work for Site Staff and ensuring that the health and safety of Site Staff is adequately safeguarded while performing the Services.
- 1.2 Scaffolding, work platforms, equipment, services and facilities provided by Purchaser for use by Site Staff shall be suitable for their intended purpose and shall conform to Applicable Law including in relation to health and safety and any applicable codes of practice.
- 1.3 Lifting equipment provided by Purchaser for use by Site Staff shall be suitable for its intended purpose and shall have current and valid test certification sufficient to satisfy local legal requirements as a minimum.
- 1.4 Purchaser acknowledges and agrees that BRUSH does not provide structural engineering inspections or any other such inspections that evaluate the stability, integrity and/or suitability of the Site. It shall remain the responsibility of Purchaser, at Purchaser's own cost, to arrange such inspections prior to the commencement of the Services.
- 1.5 Purchaser shall provide BRUSH with full details of the Site's health and safety regulations prior to the commencement of Services. Site Staff shall be entitled at any time, at his/her absolute discretion, to refuse to perform Services or suspend performance of Services, if the conditions at Site are or have the potential to be unsafe or pose an unacceptable risk to health and/or safety.
- 1.6 Purchaser shall ensure that Site Staff are permitted to take adequate rest and meal breaks during the course of the provision of Services and immediately before and after long distance travel, including a minimum rest break of eight (8) continuous hours in any twenty-four (24) hour period. Purchaser shall ensure that when on Site, Site Staff are provided with access (on the Site) to toilet facilities, clean running water and such other welfare facilities as may be reasonable in all the circumstances, including access to medical facilities as are readily available on Site in case of a temporary sickness, injury or incapacity whilst on Site. All such welfare facilities are to be provided by Purchaser at Purchaser's cost.
- 1.7 Site Staff shall not under any circumstances be required to perform Services if in the reasonable opinion of Site Staff, such performance may result in equipment being rendered incapable of being returned to service or in a condition that in the reasonable opinion of Site Staff poses an abnormal and unacceptable risk to the safety of persons or the property of third parties.
- 1.8 Site Staff shall not be required to perform Services in a designated confined space (as defined in the Confined Spaces Regulations 1997) without prior consultation with BRUSH in every instance and until all additional safety requirements of BRUSH have been implemented by Purchaser in every instance.
- 1.9 If Services are being performed by Site Staff outside of Site Staff's normal country of residence, Purchaser shall, at its own expense, provide Site Staff during the period of performance of the Services with medical treatment and emergency dental treatment of a standard not less than that normally expected by the Purchaser's own senior staff. If any of Site Staff are absent from duty due to sickness, the Purchaser's responsibilities under the Contract to provide medical treatment shall be limited to fourteen (14) consecutive days of medical treatment for the relevant Site Staff.
- 1.10 The Contract is conditional upon the machine or parts of the machine in relation to which Services are provided and Site being free from asbestos or other hazardous materials. It is the responsibility of Purchaser to inform BRUSH if asbestos or other hazardous materials may be present. BRUSH may cancel the Contract immediately without liability to Purchaser on receipt of a notice referring to this Article or if, prior to or on inspection of the machine or parts of the machine or Site, BRUSH knows or suspects asbestos or other hazardous materials to be present.
- 1.11 If BRUSH agrees to perform Services notwithstanding the presence of asbestos or hazardous materials in the machines or parts of the machines in relation to which Services are provided or Site, BRUSH will provide a written risk assessment and method statement

identifying the control measures required from Purchaser for the protection of all personnel involved, prior to the commencement of performance of Services, and Purchaser shall comply with such risk assessment and method statement.

- 1.12 Purchaser shall be responsible for disposing of any waste generated during the performance of Services. This may include the disposal of waste collected using specialist asbestos abatement equipment such as type "H" vacuums.
- 1.13 The mobilisation of Site Staff will be subject to BRUSH receiving assurances from Purchaser (to BRUSH's satisfaction in its sole discretion) concerning the safety of Site Staff from point of arrival in the country to point of departure. BRUSH reserves the right to decline to mobilise any Site Staff without incurring any liability to Purchaser if, in BRUSH's sole discretion, it deems that the safety of Site Staff is or could be at risk.
- 1.14 BRUSH shall have no liability to Purchaser for any failure to perform the Services or delay in performance of Services where such delay or failure is permitted under clauses 1.5, 1.7, 1.8, 1.10 or 1.13. BRUSH shall be entitled to an equitable adjustment to the Contract Price and/or the Due Date arising as a consequence of any postponement or suspension of work in such circumstances. The charges that shall apply in the event that any of the circumstances referred to in this Article occur are set out in the Quotation and Purchaser agrees that such charges are reasonable.

2. Working Facilities

- 2.1 Purchaser shall ensure that Plant is ready and accessible and available for the performance of the Services and that all necessary facilities are provided as and when required, including proper foundations or mounting points ready to receive the Goods as and when delivered, adequate lifting facilities and scaffolding, all skilled and unskilled labour, masons, joiners and builders' work, suitable protection for the equipment from time of delivery, any special instrumentation, all tools other than hand tools, all lighting, heating, water, gas and electricity necessary on the Site during the performance of the Services, secure storage facilities on the Site for Site Staff's tools and equipment and any other facilities reasonably requested by BRUSH from time to time. In addition, when undertaking Services at non-UK Sites: (i) Purchaser shall be responsible for the provision of certified test equipment in accordance with the minimum specification requirements that BRUSH shall define to Purchaser in advance of Site Staff attending the Site and such test equipment shall be made available for use by Site Staff whilst carrying out the Works; (ii) where any BRUSH owned equipment is required for the duration of the Services, Purchaser shall be responsible for importation of any such equipment required by BRUSH for the execution of the Services. On completion of the Services, Purchaser shall be responsible for the export of such equipment; (iii) any materials intended to remain at the Site (or other Purchaser location) such as replacement parts, spare parts or consumables required to support the provision of the Services will be sold to Purchaser FCA BRUSH UK Location.
- 2.2 All of the above are to be provided by Purchaser at its own expense to enable Services to be performed expeditiously and continuously carried out. Purchaser shall protect BRUSH and Site Staff and hold them harmless from any claim or liability whatsoever arising from the use of the facilities and/or equipment referred to in 2.1.
- 2.3 BRUSH shall have no liability to Purchaser for any delay or failure in performing Services which is caused by or contributed to by the failure or delay in Purchaser providing access to the facilities referred to in 2.1 and BRUSH shall be entitled to an equitable adjustment to the Contract Price and/or the Due Date arising as a consequence of any postponement or suspension of work resulting from such equipment and/or facilities not being available. The charges that shall apply in the event that any of the circumstances referred to in this Article occur are set out in the Quotation and Purchaser agrees that such charges are reasonable.

3. Mobilisation Date

BRUSH's ability to meet the required mobilisation date will depend upon suitable Site Staff's availability and will be subject to confirmation upon receipt of the Order.

4. Tour of Duty

- 4.1 Unless otherwise agreed, no Site Staff shall in performance of Services be required to be out of their normal country of residence for more than three (3) months. At the end of this period BRUSH will have the option (at its sole discretion) of replacing Site Staff or sending his/her family to the vicinity of Site.
- 4.2 All costs arising in connection with 4.1, including provision of suitable family accommodation for the duration of the stay, will be to Purchaser's account and will be Purchaser's responsibility.

5. Leave of Absence

During assignments lasting in excess of one (1) calendar month, Site Staff shall be entitled to take a leave of absence accrued at the rate of two (2) days per calendar month. Leave of absence is taken by agreement between BRUSH and Purchaser and is not chargeable to Purchaser.

6. Replacement of Site Staff

- 6.1 BRUSH shall, if necessary, or if so required by Purchaser, withdraw and replace Site Staff by another person capable of performing the same duties in any of the following circumstances: (i) on compassionate grounds; (ii) where Site Staff has been certified by a medical officer as having become medically unfit to perform Services; (iii) in the reasonable opinion of Purchaser is technically incompetent or negligent in the performance of Services; (iv) where Site Staff has, in the reasonable opinion of Purchaser, impaired his/her ability to perform Services through the abuse of alcohol or drugs, or has been found, on reasonable grounds, to be dishonest or otherwise untrustworthy; and (v) where Site Staff has become the subject of a demand or order by any properly authorised officials of the police, armed forces or government for his/her removal from Site. The sole liability of BRUSH shall be limited to the costs of repatriation and the supply of appropriate replacement personnel.
- 6.2 In the event that BRUSH agrees to replace Site Staff at the request of Purchaser for any other reason, the cost of replacement will be borne by Purchaser.
- 6.3 BRUSH may (without any liability to Purchaser) recall Site Staff from the Site immediately for any reason which is beyond BRUSH's control if, in BRUSH's sole discretion, it deems that the safety of Site Staff is or may be at risk. The cost of withdrawal of Site Staff in such circumstances shall be borne by Purchaser and BRUSH shall have no liability to Purchaser in respect of any losses suffered by Purchaser as a result of such recall. Purchaser shall provide BRUSH with such support and assistance as BRUSH requires in order to effect a recall of Site Staff. BRUSH shall not be obliged to recommence the performance of Services at Site until BRUSH determines (in its absolute discretion) that it is safe for Site Staff to do so.

7. Hours of Work at Site & Standby

- 7.1 Unless otherwise agreed, work carried out by Site Staff shall be undertaken between the hours of 7.30am and 5.30pm. Monday to Friday inclusive of reasonable rest breaks. Any additional daily working hours that may be required, up to a maximum of 3 hours per day, shall require BRUSH's prior written agreement and will be subject to an extra charge. Unless otherwise agreed, night work, weekend work, public/bank holiday working and/or working in abnormal conditions/environments is excluded. Should such extended working arrangements be required then additional costs would be chargeable to Purchaser's account.
- 7.2 Where work at Site is to be carried out on a chargeable day rate basis then: (i) daily rate will apply from the time that Site Staff depart from their usual place of residence to the time of return thereto; (ii) days worked in part (less than 10 hours) will be charged as full days; (iii) BRUSH will produce timesheets for Purchaser's verification and agreement of time expended.
- 7.3 Purchaser will be charged for any time during which Site Staff is held on standby at Purchaser's request or is unable to proceed with Services for reasons not attributable to Site Staff or BRUSH. The rate to be charged will be the standard rate or the overtime rate stated in the Quotation, as appropriate.

8. Travel

- 8.1 Unless otherwise agreed, Purchaser shall be responsible for making and arranging all travel, accommodation, medical and visa arrangements for Site Staff travelling from their usual place of residence to and from the Site(s).
- 8.2 Purchaser, at its own expense, shall provide in a timely manner, for all necessary entry, work and other permits as may be required.
- 8.3 Purchaser shall supply on request and in a timely manner, any necessary "Letter of Invitation" or "No Objection Certificate" at no cost to BRUSH.
- 8.4 For all air travel lasting less than six (6) hours in flight duration including any stop-over, the air travel shall be of a standard not less than full open return economy class. For all air travel exceeding six (6) hours flight duration including any stop-overs, the air travel shall be of a standard not less than full open return premium economy class. For all air travel exceeding (twelve) 12 hours flight duration including any stop-overs, the air travel shall be of a standard not less than full open return business class.
- 8.5 All air travel shall be in an aircraft conforming to the standards of the International Air Transport Association.

9. Travel Cost

- 9.1 All of Site Staff's travel time will be charged to Purchaser as detailed in the Quotation.
- 9.2 In case BRUSH make or arrange any travel or accommodation, all expense cost of travel together with the finance and administration charge will be charged to Purchaser as detailed in the Quotation.
- 9.3 Travel costs include, where appropriate, air travel or ferry, excess baggage, visa charges, taxi or car hire to travel from and to Site Staff's usual place of residence to the airport as well as in-country transportation cost and any associated costs.
- 9.4 Any local income tax or other impost payable by Site Staff shall be immediately reimbursed by Purchaser to Site Staff and shall be deemed an expense payable by Purchaser.

10. Meals and Accommodation

- 10.1 Purchaser shall reimburse BRUSH for, or, at its own expense provide and arrange, meals and accommodation for Site Staff of a standard similar, so far as possible, to that normally expected by Purchaser's senior staff. The local hotel shall be a minimum 4-star rating. Rooms shall be single occupancy and air conditioned with en-suite facilities.

10.2 For ease of accounting, standard daily meal allowances have been established for use in some countries. Where a daily meal allowance is stated in the Quotation, this will be the applicable charge for reimbursement to BRUSH for Site Staff's midday and evening meals in the country concerned.

11. Training and Induction

Training and induction time will be charged at the standard rate or the overtime rate as stated in the Quotation as appropriate.

12. Interpreters

Purchaser shall make competent interpreters available to Site Staff free of charge if so required by BRUSH.

13. Timesheets

To minimise disputes as to the validity of timesheets, Purchaser will, prior to mobilisation of Site Staff, nominate a Site representative(s) who is/are authorised to sign Site Staff's timesheets. If on arrival at Site, Site Staff is not able to establish the presence of Purchaser's nominated authorised representative on Site, he/she will report this situation to BRUSH who will seek clarification from Purchaser before Services are commenced. Any delay or additional charges attributable to such action by BRUSH will be to Purchaser's account.

14. Dependencies

BRUSH shall be discharged from its obligations under the Contract where Purchaser is in breach of this Services Appendix or where the responsibilities of Purchaser and the actions and events in relation to Services which need to be performed or (as the case may be) to occur, or not to occur, in order for BRUSH to perform its obligations are not met other than due to a breach of the Contract by BRUSH.

15. General Clauses

15.1 Following commencement of Services, any materials or labour requirements in addition to those included in the Works and where the need for such could not normally have been foreseen by a conscientious organisation prior to the commencement of Services shall incur additional costs and shall constitute a variation to the Contract.

15.2 All information and advice set out in any documents and any information or advice given verbally by or on behalf of BRUSH is for the benefit of Purchaser only. BRUSH shall have no liability whatsoever to any third party which relies on such information or advice. Purchaser shall indemnify BRUSH on demand against any damages, costs, losses, expenses, incurred by, and any claims (including claims from third parties), proceedings, demands or actions brought against BRUSH arising in connection with the reliance by any third party on any information or advice which is provided by BRUSH on Site in relation to Services.