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EIN No. 43-207 6510

All orders which are accepted, are accepted by Brigade Electronics Inc. , a New York corporation with office address: 1976 W Tyson Rd, Portland, IN 47371 (“**Brigade**”) and will be subject to these Conditions. Unless specifically agreed otherwise in writing, these Conditions (and the documents referred to in these Conditions) apply to the Contract to the exclusion of any other terms that the Purchaser may seek to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

Definitions:

In these Conditions the following definitions apply:

“**Bespoke Goods**” shall mean any items which are not part of Brigade’s standard range of Goods and which have been manufactured or procured by Brigade to the Purchaser’s specific order, design or specification, as contained within a Purchaser Specification or any Goods within Brigade’s standard range of Goods which have been customized to the Purchaser’s specific requirements;

“**Business Day**” shall mean a day (other than a Saturday, Sunday or public holiday) when banks in New York are open for business;
“**Conditions**” shall mean these terms and conditions of sale and any special terms and conditions agreed in writing between Brigade and the Purchaser;

“**Confidential Information**” shall mean any information of a confidential nature concerning the business, affairs, customers, clients, or suppliers of a party or of any member of its group, including information relating to a party’s operations, processes, plans, product information, know-how, designs, trade secrets, software, market opportunities and customers;

“**Contract**” shall have the meaning given to it in clause 2.3;

“**Force Majeure Event**” shall mean an event or circumstance the cause of which is beyond Brigade’s reasonable control, including but not limited to acts of God, flood, drought, earthquake or other natural disaster, epidemic or pandemic, terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions and import or export restrictions, quota’s or prohibitions, breaking off of diplomatic relations, nuclear, chemical or biological contamination, sonic boom, maritime incidents and disruptions, including lost cargo and piracy, any law or any action taken by a government or public authority, including failing to grant a necessary licence or consent, collapse of buildings, fire, explosion or accident, any labour or trade dispute, strikes, industrial action or lockouts or any non-performance by suppliers or subcontractors or interruption or failure of any utility service;

“**Goods**” shall mean the products described in Brigade’s standard product catalogue from time to time and, where the context requires, the Goods ordered by and supplied to the Purchaser;

“**Intellectual Property Rights**” shall mean any patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, Confidential Information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, any rights and all similar or equivalent rights or forms of protection that subsist now or will subsist in the future in any part of the world;

“**Licensed Software**” means any software incorporated into the Products by Brigade or used or licensed by Brigade in connection with the Products;

“**Order**” means the Purchaser’s order as described at clause 2.1;

“**Order Acknowledgement**” shall have the meaning given to it in clause 2.3;

“**Products**” shall mean Goods and Bespoke Goods;

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“**Purchaser**” shall mean the person who or firm that purchases the Products or Services from Brigade;

“**Purchaser Specification**” shall mean a specification setting out the Purchaser’s requirements for Bespoke Goods;

“**Specification**” shall mean the standard documented details of any Goods which describe the products, materials, volumes and work required;

“**Services**” shall mean services such as installation, training related to Products and technical support, as agreed with the Purchaser in accordance with clause 5.1;

“**Tax**” shall mean sales, use or excise tax chargeable in respect the supply of Products and Services; and

“**Warranty Period**” shall mean the standard warranty period for the Products and Services set out in Brigade’s official warranty documentation for the specific type of Product or Service which is the subject of an Order or, if no such warranty period is set out in Brigade’s official warranty documentation, the warranty period shall be 12 months. For the avoidance of doubt, all warranty periods shall start upon the date of the invoice rendered by Brigade in relation to the particular Product or the date of performance of the Services unless otherwise agreed in writing by Brigade.

1. PRICES:

- 1.1 Unless otherwise agreed in writing, the price for Products and Services shall be the price detailed in the Order Acknowledgement or, if no price is stated in the Order Acknowledgement, the price quoted to the Purchaser by Brigade. Unless otherwise agreed in writing by Brigade, any prices quoted by Brigade shall be valid for 30 days.
- 1.2 All prices quoted are exclusive of Tax and, unless indicated otherwise on the Order Acknowledgement or otherwise agreed in writing, are exclusive of the costs and charges of packaging, insurance and delivery of the Products and any other duties and tariffs, which shall be invoiced to the Purchaser in addition to the price.

2. ORDERS:

- 2.1 An Order constitutes an offer by the Purchaser to purchase Products or Services in accordance with these Conditions (“**Order**”).
- 2.2 The Purchaser is responsible for ensuring that the terms of any Order are complete and accurate.
- 2.3 An Order shall only be deemed to be accepted when Brigade issues an Order Acknowledgement, at which point a contract (“**Contract**”) shall come into existence between the Purchaser and Brigade.
- 2.4 Unless otherwise agreed in writing, any samples, drawings, or advertising produced by Brigade, and any illustrations contained in Brigade’s catalogues or brochures, are produced for the sole purpose of giving an approximate idea of the Goods referred to in them. They shall not form part of the contract between Brigade and the Purchaser and Brigade shall be under no liability whatsoever for inaccuracies, changes or alterations in dimensions or measurements given.

3. GOODS AND BESPOKE GOODS:

- 3.1 Goods are as described in Brigade’s catalogue, (unless modified by any applicable Purchaser Specification agreed between the parties which shall result in such Goods being Bespoke Goods).
- 3.2 Brigade reserves the right to amend the Specification of the Goods if such changes do not materially affect the quality or functionality of the Goods or if required to ensure compliance with any applicable statutory or regulatory requirements.
- 3.3 Where Brigade supplies any Bespoke Goods to the Purchaser then:
 - 3.3.1 the price for the supply of Bespoke Goods shall be as set out in Brigade’s formal quotation or otherwise advised to the Purchaser by Brigade in writing;
 - 3.3.2 Brigade shall manufacture the Bespoke Goods in all material respects in accordance with the Purchaser Specification;
 - 3.3.3 the Purchaser shall have full responsibility for ensuring the accuracy and completeness of the Purchaser Specification;
 - 3.3.4 the Purchaser shall indemnify Brigade and keep Brigade fully and effectively indemnified from and against all liabilities, costs, expenses, damages and losses and all interest, penalties and legal and other professional costs and expenses suffered or incurred by Brigade in connection with any claim made against Brigade by any third party for any actual or

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alleged infringement of that third party's Intellectual Property Rights arising out of or in connection with Brigade's use of the Purchaser's Specification and the manufacture and/or supply of Bespoke Goods;

- 3.3.5 if the Purchaser wishes to amend the Purchaser Specification, it shall notify Brigade in writing. Brigade will consider the requested change, including the practicalities of such requested change and the impact on the price and these Conditions and on timings for manufacture and delivery. Brigade shall only act in accordance with any amended Purchaser Specification if Brigade and the Purchaser agree any such consequential amendments in writing;
- 3.3.6 Brigade reserves the right to amend the Purchaser Specification if such changes do not materially affect the quality or functionality of the Bespoke Goods or if required to ensure compliance with any applicable statutory or regulatory requirements;
- 3.3.7 once an Order has been accepted by Brigade for the supply of Bespoke Goods there is no right of cancellation and the Purchaser shall remain liable for the full price of the Bespoke Goods notwithstanding any purported cancellation by the Purchaser.

4. DELIVERY:

- 4.1 Delivery terms (including any applicable Incoterm) which will apply shall be set out in the Order Acknowledgement. Where Brigade is arranging delivery and/or shipping, unless otherwise agreed in writing, shipment shall be made by a carrier of Brigade's choice. If no specific delivery terms are set out in an Order Acknowledgement, the Incoterms (Incoterms 2020) shall be ex works.
- 4.2 Brigade's Order Acknowledgement will set out an estimated date for delivery or shipment (in the case of export sales) and whilst Brigade will make reasonable efforts to meet the delivery date, no guarantee of the delivery date is given and time for delivery shall not be of the essence.
- 4.3 The Purchaser shall ensure that it provides full and accurate delivery instructions to Brigade, along with any other instructions which are relevant to the delivery of the Products.
- 4.4 Where agreed in advance, the Purchaser shall collect the Products from Brigade's premises, or such other location as may be agreed, promptly upon Brigade notifying the Purchaser that the Products are ready for collection, failing which Brigade may resell the Products and charge the Purchaser for any shortfall below the price payable by the Purchaser for the Products and, in addition, may charge the Purchaser for any reasonable storage and selling costs incurred by Brigade.
- 4.5 Brigade may deliver the Products by instalments, which shall be invoiced and paid for separately. Any delay in delivery or defect in an instalment shall not entitle the Purchaser to cancel any other instalment.

5. SERVICES:

- 5.1 Unless agreed otherwise in writing, where Brigade provides any Services, the scope of those Services shall be set out in Brigade's Order Acknowledgement and Brigade shall supply the Services to the Purchaser in all material respects in accordance with any specific specification for the Services agreed in writing between Brigade and the Purchaser. Brigade shall use reasonable efforts to perform the Services in accordance with timescales agreed in writing between Brigade and the Purchaser but such performance dates shall be estimates only and time for performance of Services shall not be of the essence. Upon the issuing of an Order Acknowledgement for Services, a Contract shall come into force and no cancellation or amendments shall be permitted unless Brigade gives its prior written consent (in its absolute discretion). Any cancellations or amendments agreed to by Brigade will be on the basis that the Purchaser pays such cancellation charges as Brigade notifies to the Purchaser.
- 5.2 Brigade reserves the right to make changes to any agreed Services which do not materially affect the nature or quality of the Services or which are necessary to enable compliance with any applicable law or safety requirement.
- 5.3 The Purchaser shall provide Brigade with all such information and materials as Brigade may reasonably require in order to supply the Services and shall ensure that such information is complete and accurate.
- 5.4 If Brigade's performance of the Services is prevented, hindered or delayed by any act or omission by the Purchaser or its customers or failure by the Purchaser or its customers to perform any relevant obligation, Brigade shall have the right to suspend performance of the Services until any such failure is remedied and Brigade shall not be liable for any costs or losses sustained or incurred by the Purchaser or its customers arising directly or indirectly from any resulting failure or delay by Brigade. The Purchaser shall indemnify Brigade and keep Brigade fully and effectively indemnified from and against any additional liabilities, costs and expenses incurred by Brigade as a result of any act, omission or failure by the Purchaser or its customers.

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6. INVOICING AND PAYMENT:

- 6.1 Brigade may invoice the Purchaser for Products and Services at any time after the Order is accepted.
- 6.2 Unless agreed otherwise by Brigade, payment for Products and Services is due in full and cleared funds by the end of the calendar month immediately following the date of invoice. Notwithstanding the foregoing, Brigade shall be entitled to amend payment terms at any time by providing a notice in writing to the Purchaser.
- 6.3 In order to purchase Products and Services from Brigade, the Purchaser will need a credit account with Brigade unless otherwise agreed by Brigade. The Purchaser shall provide such information as Brigade requests in order for such credit account to be set up and the Purchaser acknowledges that Brigade will perform various checks, including credit checks, in order to set up such credit account. The granting of any such credit account shall be in Brigade's sole discretion and Brigade shall be entitled to withdraw such credit account at any time at its discretion.
- 6.4 Time for payment is of the essence.
- 6.5 If any payment due to Brigade is not paid by the due date for payment, Brigade shall, without prejudice to its other rights and remedies, be entitled to suspend the delivery of the Products or performance of Services until payment is received in full.
- 6.6 The Purchaser shall pay all amounts due to Brigade in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law).
- 6.7 Brigade may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Purchaser against any amount payable by Brigade to the Purchaser.
- 6.8 Purchaser shall reimburse Brigade for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees.

7. CLAIMS FOR NON-DELIVERY:

- 7.1 Written notification of non-delivery of Products or failure to provide Services must be given within five (5) days of the estimated delivery date or performance date, quoting the invoice number. If the Purchaser fails provide such written notice in accordance with these Conditions, then the Products shall be deemed to have been delivered, or Services provided, free of defects to the Purchaser.
- 7.2 Brigade shall not be liable to compensate the Purchaser for non-delivery or late delivery of Products or Services, nor shall claims made pursuant to these Conditions entitle the Purchaser to cancel the Contract or Order.

8. RISK AND TITLE:

- 8.1 Products supplied by Brigade shall be at the Purchaser's risk immediately on completion of delivery.
- 8.2 Legal title to all Products supplied by Brigade to the Purchaser will continue to belong to Brigade until such time as the Purchaser has paid for the Products in full, including Tax, and has also paid for all other Products and Services supplied by Brigade to the Purchaser, in which case title to the Products shall pass at the time of payment of all such sums.
- 8.3 Until such time as property and title in any Products has passed, the Purchaser shall:
- 8.3.1 hold the Products on a fiduciary basis as Brigade's bailee;
- 8.3.2 store the Products so that they remain readily identifiable as Brigade's property and not remove, deface or obscure any identifying mark or packaging on or in relation to the Products;
- 8.3.3 keep the Products in satisfactory condition and keep them insured against all risks for their full purchase price from the date of receipt; and
- 8.3.4 notify Brigade if it becomes subject to any of the events listed in clauses 11.1.4 to 11.1.16.
- 8.4 If before title to the Products passes to the Purchaser, the Purchaser becomes subject to any of the events listed in clauses 11.1.4 to 11.1.16 inclusive then, without limiting any other right of remedy Brigade may have, Brigade may at any time:

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- 8.4.1 require the Purchaser to deliver up all Products in its possession that have not been resold, or irrevocably incorporated into another product, and
- 8.4.2 if the Purchaser fails to do so promptly, enter any premises of the Purchaser or of any third party where the Products are stored in order to recover them.
- 8.5 Brigade will be entitled to recover from the Purchaser all costs including legal fees which have been occasioned in the repossession of Products.
- 8.6 Brigade may recover Products in which title has not passed to the Purchaser. The Purchaser irrevocably licenses Brigade, their officers, employees and agents, to enter any premises of the Purchaser (including vehicles), in order to satisfy itself that the Purchaser is complying with the obligations in clause 8.3 and to recover any Products in which property has not passed to the Purchaser.
- 8.7 Notwithstanding the foregoing, Brigade may, at its option, transfer title to any Products prior to receipt of payment for such Products.
- 8.8 Subject to clause 8.3, the Purchaser may resell or use Products in the ordinary course of its business (but not otherwise) before Brigade receives payment for the Products. However, if the Purchaser resells the Products before that time:
- 8.8.1 it does so as principal and not as Brigade's agent; and
- 8.8.2 title to those Products shall pass from Brigade to the Purchaser immediately before the time at which resale by the Purchaser occurs.

9. RETURNS:

- 9.1 Returns for credit are accepted only if Brigade gives its prior written consent (in its sole discretion). If Brigade gives such consent, such returns must be sent to Brigade freight pre-paid (DDP, Incoterms 2020) and any other costs and Goods must be in an unused, undamaged and resellable condition and accompanied by the relevant invoice details.
- 9.2 All returns under clause 9.1 are made at the Purchaser's own risk and will be subject to a handling charge of an amount equal to fifteen percent (15%) based on the price charged to the Purchaser as a reflection of Brigade's handling and re-stocking costs.
- 9.3 Brigade cannot accept the return of Bespoke Goods.

10. WARRANTY AND LIABILITY:

- 10.1 Subject to clause 10.10, Brigade warrants the Products to be free from material defects in material and workmanship for the Warranty Period. This warranty is subject to the terms of any specific written warranty given by Brigade in respect of the Products as set out in Brigade's official warranty documentation and subject always to the information and conditions set out in Brigade's standard product information.
- 10.2 Brigade warrants that Services will be provided using reasonable care and skill.
- 10.3 Unless specifically agreed otherwise in writing by Brigade, Brigade does not provide any other warranties, representations, guarantees or other assurances, express or implied, with respect to the Products or Services, their marketability, quality or fitness for any particular use or purpose or compatibility with Purchaser or third party products or systems beyond those contained in clauses 10.1 and 10.2 and subject always to the information and conditions included within Brigade's standard product information and official warranty documentation. The Purchaser shall ensure that all such product information is provided to its customer and shall not provide any warranties to its customers beyond those set out in clauses 10.1 and 10.2.
- 10.4 All terms which may otherwise be implied, whether by statute, common law or by custom and practice are hereby excluded to the fullest extent permitted by law.
- 10.5 Brigade manufactures Products and supplies Services in accordance with New York law. Although Brigade uses reasonable endeavours to ensure Products comply with applicable laws in the countries where it directly distributes the Products, the Purchaser shall be and remain responsible for ensuring that Products and Services supplied to it comply with all applicable laws and regulations of the countries in which it is to be used and/or installed and/or resold.

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- 10.6 If, in the course of the resale of Products, the Purchaser carries out any installation services in relation to the Products, the Purchaser shall ensure that it is competent to carry out such services and shall provide such evidence as Brigade may request from time to time to demonstrate its competence.
- 10.7 The Purchaser shall carry out all installation services with all due care, skill and attention and in accordance with any guidance, training and instructions issued by Brigade and in accordance with all applicable laws.
- 10.8 The Purchaser carries out all such installation activities at its own risk and Brigade shall have no liability whatsoever (whether in tort (including negligence), contract, breach of statutory duty or otherwise) for any act or omission of the Purchaser in carrying out any such installation services and the Purchaser shall indemnify Brigade and keep Brigade fully and effectively indemnified from and against any such liabilities, claims, damages, costs and expenses which Brigade may suffer and incurred in relation to any installation services performed by the Purchaser (or its sub-contractors).
- 10.9 Subject to the foregoing provisions of this clause 10, the Purchaser may reject any Products delivered to it that do not comply with clause 10.1, provided that a notice of rejection is given to Brigade:
- 10.9.1 in the case of a defect that is apparent on normal visual inspection, within five (5) working days of delivery; and
- 10.9.2 in the case of a latent defect, as soon as reasonably practicable following the latent defect becoming apparent.
- 10.10 Brigade shall not be liable for a Product's failure to comply with the warranty set out in clause 10.1 above in any of the following circumstances:
- 10.10.1 the Purchaser makes any further use of the Products after giving notice in accordance with clause 10.9;
- 10.10.2 the defect arises because the Purchaser or any other third party failed to follow Brigade's instructions;
- 10.10.3 the defect arises as a result of Brigade following any Purchaser Specification;
- 10.10.4 the Purchaser or any third party alters or repairs the Products without the prior written consent of Brigade;
- 10.10.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions;
- 10.10.6 the defect arises as a result of defects or failures of products or systems into which the Products are incorporated;
- 10.10.7 the defect arises as a result of the Product being incorporated or combined with a third party's product or system;
- 10.10.8 the Products differ from their description or an agreed Purchaser Specification as a result of Brigade making changes to ensure compliance with applicable statutory or regulatory requirements; or
- 10.10.9 the defect falls within the scope of specific categories identified in the product information provided by Brigade relating to the Product.
- 10.11 If the Purchaser rejects any Products under clause 10.9, Brigade shall at its option and as the Purchaser's sole remedy either repair or replace the Products unless otherwise specified in a particular warranty. Where Brigade replaces a Product pursuant to a valid warranty claim, the removal of the defective Product and installation of the replacement Product are for the Purchaser to arrange at its own cost.
- 10.12 Nothing in these Conditions shall limit or exclude Brigade's liability for:
- 10.12.1 death or personal injury caused by its negligence;
- 10.12.2 fraud or fraudulent misrepresentation; or
- 10.12.3 for any liability which cannot be limited or excluded by operation of law.
- 10.13 Subject to the foregoing provisions of this clause 10 and to clause 10.12, Brigade's total liability to the Purchaser with respect to Products and Services and whether arising in contract, tort (including negligence), breach of statutory duty or otherwise shall in no circumstances exceed an amount equal to one hundred and fifty percent (150%) of the price of the Products or Services in question. These limitations apply whether the liability is based on contract, tort, strict liability or any other theory.

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- 10.14 Subject only to clause 10.12, notwithstanding anything to the contrary, Brigade shall under no circumstances whatsoever have any liability to the Purchaser or any third party, whether in contract, tort (including negligence), breach of statutory duty or otherwise, for any loss of use, revenue, profit, loss of business, increased costs, loss of anticipated savings, loss of data or diminution in value, failure by the Purchaser to fulfil its obligations and duties to its customer or for any indirect, incidental, special, exemplary, punitive or consequential losses arising under or in connection with the Contract or the supply of Products and/or Services, regardless of whether such damages were foreseeable and whether or not Brigade has been advised of the possibility of such damages, and notwithstanding the failure of any agreed or other remedy of its essential purpose.
- 10.15 The Purchaser shall enter into contracts with its customers and shall be solely responsible for fulfilling its contractual obligations to its customers and Brigade shall have no liability whatsoever to the Purchaser, or its customer, as a result of the Purchaser failing to perform its contractual obligations to its customer.
- 10.16 The Purchaser shall give such assistance as Brigade may request from time to time with respect to any recall of the Products.
- 10.17 The Purchaser shall maintain appropriate, up-to-date and accurate records with respect to all Products which the Purchaser has resold so as to enable the immediate recall of any Products. These records shall include records of deliveries to the Purchaser's customers, including batch numbers, delivery date, name and address of the customer, telephone number and email address. The Purchaser shall allow Brigade or its agents to inspect, audit and copy such records during normal business hours.
- 10.18 The Purchaser shall indemnify Brigade and keep Brigade fully and effectively indemnified from and against all damages, claims, losses, liabilities, costs and expenses suffered or incurred by Brigade as a consequence of any breach by the Purchaser of its obligations to its customers.

11. TERMINATION:

- 11.1 Without prejudice to any other rights it may have, Brigade may by written notice to the Purchaser, immediately terminate any Contract between the Purchaser and Brigade, suspend any further deliveries or service provision to the Purchaser, and recover from the Purchaser all sums due from it under any Contract with Brigade (notwithstanding any period of credit which may have been agreed), together with any accrued interest and other costs, expenses and any losses caused to Brigade as a result of any termination, if:
- 11.1.1 any payment due by the Purchaser to Brigade is overdue in whole or in part,
- 11.1.2 the Purchaser commits a breach of any term of these Conditions and (if such a breach is remediable) fails to remedy that breach within seven (7) days of being notified in writing to do so,
- 11.1.3 the Purchaser repeatedly breaches any of the terms of these Conditions in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of these Conditions;
- 11.1.4 the Purchaser suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts as they fall due;
- 11.1.5 the Purchaser begins negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors;
- 11.1.6 the Purchaser commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization, or assignment for the benefit of creditors; ;
- 11.1.7 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Purchaser (being a company, limited liability partnership or partnership);
- 11.1.8 an application is made to court, or an order is made, for the appointment of an administrator or a notice of intention to appoint an administrator is given or an administrator is appointed over the Purchaser;
- 11.1.9 the holder of a qualifying floating charge over the assets of that Purchaser has become entitled to appoint or has appointed an administrative receiver;
- 11.1.10 a person becomes entitled to appoint a receiver over all or any of the assets of the Purchaser or a receiver is appointed over all or any of the assets of the Purchaser;

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- 11.1.11 a creditor or encumbrancer of the Purchaser attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- 11.1.12 any event occurs, or proceeding is taken, with respect to the Purchaser in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clauses 11.1.4 to 11.1.11 inclusive or clause 11.1.16;
- 11.1.13 the Purchaser ceases, or threatens to cease, to carry on all or substantially the whole of its business;
- 11.1.14 the Purchaser's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of these Conditions is in jeopardy;
- 11.1.15 there is a direct or indirect change of control of the Purchaser.
- 11.2 On termination for any reason:
- 11.2.1 clauses which expressly or by implication survive termination shall continue in full force and effect following termination;
- 11.2.2 the accrued rights, remedies, obligations and liabilities of the parties as at termination shall be unaffected, including the right to claim damages in respect of any breach of contract which existed at or before the date of termination; and
- 11.2.3 the Purchaser shall become liable to pay to Brigade any outstanding amounts due for any Services and/or Products which have been provided to date and remain unpaid for and which are subject to an outstanding Order.

12. FORCE MAJEURE:

If Brigade is delayed, hindered or prevented from performing any obligation due to a Force Majeure Event, Brigade may at its sole option delay the performance of, or cancel the whole or any part of the Contract, and Brigade shall have no liability whatsoever for any such delay or cancellation or any inability to deliver.

13. CONFIDENTIALITY AND INTELLECTUAL PROPERTY:

- 13.1 The Purchaser undertakes that it shall not at any time disclose to any person any Confidential Information concerning the business, affairs, customers, clients or suppliers of Brigade or of any member of the group to which Brigade belongs except as permitted by clause 13.2. For the purposes of this clause, group means, in relation to Brigade, Brigade, any subsidiary or holding company from time to time of Brigade, and any subsidiary from time to time of a holding company of Brigade.
- 13.2 The Purchaser may disclose Brigade's Confidential Information to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information solely for the purpose of exercising its rights or carrying out its obligations under or in connection with these Conditions. The Purchaser shall ensure that its employees, officers, representatives, contractors, sub-contractors or advisers to whom it discloses Brigade's Confidential Information comply with this clause 13, or as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 13.3 Unless agreed otherwise in writing, the Intellectual Property Rights in the Products and Services and the Licensed Software (and all related documentation) are, and shall remain, the property of Brigade or its licensor and the Purchaser is granted a nonexclusive worldwide license to use such Intellectual Property Rights solely for the purpose of enabling it to resell or utilize the Products, Services and the Licensed Software. The Purchaser shall, if requested to do so by Brigade, enter into an end user license agreement with Brigade or any third-party supplier notified to the Purchaser by Brigade.
- 13.4 If Brigade gives the Purchaser written consent to use its trademarks or name, the Purchaser shall not:
- 13.4.1 use any of Brigade's trademarks in any way which might prejudice their distinctiveness or validity or the goodwill of Brigade;
- 13.4.2 use in relation to the Products any trademarks other than in accordance with Brigade's instructions;
- 13.4.3 use any trademarks or trade names so resembling any trademark or trade names of Brigade as may be likely to cause confusion or deception.

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- 13.5 The Purchaser shall not use or apply any other trade marks on the Products and shall not take any steps to conceal or obscure any of Brigade's trademarks.
- 13.6 The Purchaser shall not modify, adapt, develop, create any derivative work, reverse engineer, decompile or disassemble the Products or the Licensed Software or carry out any other act which is inconsistent with Brigade's ownership of the Intellectual Property Rights therein and shall ensure that each reference to, and use of the Products or any Brigade Intellectual Property Rights by the Purchaser, is in a manner approved by Brigade and accompanied by an acknowledgement approved by Brigade of Brigade's ownership of such Intellectual Property Rights.
- 13.7 The Purchaser shall use all reasonable endeavours to prevent any infringement of Brigade's Intellectual Property Rights in the Licensed Software, Products and Services and related documentation and shall promptly report to Brigade any such infringement that comes to its attention. In particular, the Purchaser shall:
- 13.7.1 ensure that each licensed user, before starting to use the Licensed Software, is made aware that the Licensed Software is proprietary to Brigade or is licensed to Brigade by a third party and that it may only be used in accordance with these Conditions and the terms of any end-user license agreement;
- 13.7.2 implement suitable disciplinary procedures for employees who make unauthorised use or copies of the Licensed Software; and
- 13.7.3 not permit third parties to have access to the Licensed Software without the prior written consent of Brigade, who may require that such third party executes a written confidentiality agreement before being given access to the same.
- 13.8 The Purchaser shall ensure that all of the obligations in this clause 13 are passed on in full to its customers, suppliers, subcontractors and end-users and shall indemnify Brigade and keep Brigade fully and effectively indemnified from and against all liabilities, losses, damages, costs and expenses suffered or incurred by Brigade as a result of any breach of the foregoing provisions of this clause 13 (including as a result of any breach by its customers, suppliers, subcontractors and end-users).
- 13.9 If the Purchaser requires Brigade to attach its trademark, name or logo onto any of the Products, the Purchaser hereby grants a non-exclusive license to Brigade (with the right to sub-license to its suppliers) to use any such trademark, name and logo for the purpose of fulfilling the Purchaser's requirements. The Purchaser shall indemnify Brigade and keep Brigade fully and effectively indemnified from and against any and all liabilities suffered or incurred by Brigade as a result of Brigade affixing any such trademark, name and logo in accordance with the Purchaser's instructions.

14. DATA PROTECTION:

- 14.1 If Brigade receives any personal data during the supply of Products or Services under these Conditions, such personal data shall be dealt with in accordance with Brigade's Privacy Policy, a copy of which is available on Brigade's website.

15. SEVERANCE & WAIVER:

- 15.1 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision of the Contract is deemed deleted under this clause 15.1, the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 15.2 Any failure by Brigade to enforce any of its rights under these Conditions shall not be taken as a waiver of any of Brigade's rights including those in these Conditions. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from the Contract operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

16. GOVERNING LAW AND JURISDICTION:

- 16.1 These Conditions and any Contracts between the parties and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed, interpreted and construed by and in accordance with the internal substantive laws of New York, USA without regard to the conflict of laws provisions thereof, and expressly excluding the United Nations Convention on Contracts for the International Sale of Goods. Both parties irrevocably agree that the federal court of the Southern District of New York, United States, or in the state courts of the County of New York, State of New York shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with products or services contemplated by these Conditions and under any Contract. Both parties hereto irrevocably submit to such jurisdiction and venue, and waive any objection to the contrary hereafter.

CONDITIONS OF SALE

17. NOTICES:

- 17.1 All communications between the parties about the Contract or these Conditions must be in writing and delivered by hand or by pre-paid first class mail or by email to its principal office or such other address as may be notified to the other party from time to time in accordance with this clause.
- 17.2 Communications shall be deemed to have been received:
- 17.2.1 if sent by first class pre-paid mail, four (4) days after depositing with the USPA (exclusive of the date of posting);
- 17.2.2 if delivered by hand, on the day of delivery; and
- 17.2.3 if sent by email on a working day prior to 4pm, at the time of transmission, and otherwise on the next working day provided that the sender can show satisfactory transmission to Brigade and receipt by Brigade.

18. THIRD PARTY RIGHTS:

- 18.1 . This Contract is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of these Conditions.

19. VARIATION:

- 19.1 No variation of these Conditions shall be effective unless it is in writing and signed by the parties.

20. ENTIRE AGREEMENT:

- 20.1 Save where Brigade's standard documents are referenced within these Conditions, these Conditions constitute the entire agreement between the parties and supersede and extinguish all previous agreements, promises, assurances, warranties, representations and understandings between Brigade and the Purchaser, whether written or oral, relating to its subject matter.
- 20.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in these Conditions. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in these Conditions.

21. ASSIGNMENT AND SUBCONTRACTING:

- 21.1 Brigade may at any time assign, transfer, subcontract or deal in any other manner with all or any of its rights or obligations under these Conditions.
- 21.2 The Purchaser may not assign, transfer, subcontract, or deal in any other manner with any or all of its rights or obligations under these Conditions without the prior written consent of Brigade.
- 21.3 If the Purchaser subcontracts any of its obligations under these Conditions, it shall remain responsible for ensuring all subcontractors comply in full with these Conditions and shall remain responsible for all acts and omissions of its subcontractors.

22. SANCTIONS AND EXPORT CONTROL:

- 22.1 Brigade complies strictly with all applicable U.S. sanctions and export control laws and regulations, and all related regulations (and in the case of all of the foregoing, all extensions, amendments, modifications or replacements to such laws and regulations (together referred to as "Sanctions and Export Laws")).
- 22.2 All supplies of Products and Services by Brigade shall only be made if Brigade is satisfied that it is able to make such supplies strictly in accordance with the Sanctions and Export Laws. If any supplies by Brigade require export licences or any other permissions, licences or consents, any supply by Brigade shall be subject to both Brigade and the Purchaser obtaining all necessary export licences and all other necessary permissions, licences and consents.
- 22.3 In order to ensure that Brigade can comply with the Sanctions and Export Laws, the Purchaser must:

CONDITIONS OF SALE

- 22.3.1 on request, provide Brigade with information about the end-use, the customer and end-user (including the ultimate beneficial ownership of the end-user) and ultimate destination of Products and/or Services to be supplied by completing an end user declaration;
- 22.3.2 complete any requests relating to the classification of the Products;
- 22.3.3 apply for, in a timely manner, all applicable foreign export and/or import licences, permissions and consents.
- 22.4 If the Purchaser is re-exporting and/or selling on Products supplied by Brigade, it is the Purchaser's responsibility to ensure that:
- 22.4.1 it complies in full with the Sanctions and Export Laws, along with all other sanctions and export laws which may be applicable to its export and/or re-sale of the Products and/or Services; and
- 22.4.2 it has a clear understanding of the ultimate beneficial owner of all entities to which it exports and/ or resells; and
- 22.4.3 it monitors and checks all applicable sanctions lists prior to export and/or resale; and
- 22.4.4 it has in place appropriate monitoring systems to identify any unusual customer requests, including unusual shipping routes; and
- 22.4.5 that it has in place all of the relevant export authorisations and all other applicable permissions, consents and licences necessary to lawfully export and/or re-sell the Products and/or Services.
- 22.5 The Purchaser shall notify Brigade immediately in writing if it considers that it has, or may have, supplied Products or Services in breach of the requirements of this clause 22.
- 22.6 The Purchaser shall indemnify Brigade and keep Brigade fully and effectively indemnified from and against all claims, proceedings, actions, fines, losses, costs and damages arising out of or relating to its non-compliance with this clause 22.
- 22.7 Brigade shall be entitled to terminate all supplies under a Contract with immediate effect in the event that the Purchaser breaches, or Brigade has grounds to believe or suspect (acting reasonably), that the Purchaser may be in breach of any of the requirements of this clause 22.
- 23. RELATIONSHIP OF THE PARTIES** The relationship between the parties is that of independent contractors. nothing contained in the Contract shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.