

TERMS AND CONDITIONS FOR THE PROCUREMENT OF COMMERCIAL GOODS AND SERVICES

This document, together with any attachments appended hereto and/or referenced herein, constitutes the terms and conditions (hereinafter the “**Terms and Conditions**”) for the Contract between the parties, and acceptance is strictly limited to the terms and conditions contained herein. Any additional or differing terms, conditions or limitations of liability proposed by Seller, whether in a quote, acceptance or delivery document shall have no effect unless accepted in writing by Buyer. In particular, any limitation of liability or disclaimer of warranty proposed by Seller at any time is expressly rejected. Seller’s written acknowledgement to furnish the Goods or Services pursuant to these Terms and Conditions, or Seller’s commencement of such performance or acceptance of any payment relating thereto shall constitute Seller’s unqualified and irrevocable acceptance of these Terms and Conditions for the Contract.

1. Definitions:

Words, as employed in this Agreement, shall have their normally accepted meanings. The following terms shall have the described meaning:

- (a) “**Buyer**” shall mean Bruzzone Shipping Inc. and/or the entity identified as the Buyer in the Contract.
- (b) “**Contract**” shall mean the agreement between the parties for the procurement of commercial goods and services, any special conditions appended thereto or documents incorporated therein as Exhibits, Addendum, Schedules, Annexes, or Appendices, including but not limited to this terms and conditions, and shall apply to any Purchase Order issued by Buyer to Seller.
- (c) “**Goods**” or “**Services**” shall mean those goods or services ordered by the Buyer under any formal Purchase Orders.
- (d) “**Purchase Order**” shall mean the contractual instrument of which these Terms and Conditions are a part.
- (e) “**Seller**” shall mean the party identified as the Seller in this Contract.

2. Price:

- (a) Unless otherwise specified, the prices established under the Contract are firm fixed prices. Seller warrants that any unit prices charged herein do not exceed the unit prices charged by Seller to other customers in substantially similar transactions.
- (b) Unless otherwise specified in the Purchase Order, shipping terms shall be FOB Seller’s Dock. Seller shall adhere to any shipping instructions contained in the Purchase Order.

3. Schedule and Delivery; Notice of Delay:

Seller shall strictly adhere to all Purchase Order schedules. Time is and shall remain of the essence in the performance of the Contract. Seller shall notify Buyer in writing immediately of any actual or potential delay to the performance of the Contract. Such notice shall include a revised schedule and shall not constitute a waiver to Buyer’s rights and remedies hereunder. Failure to adhere to delivery schedules shall constitute a breach of these Terms and Conditions, and shall entitle Buyer to any remedy available at law. Buyer reserves the right to cancel the Purchase Order without liability to Buyer and without waiver of any other remedies of Buyer if delivery or performance is not as specified in such Purchase Order.

4. New Materials; Packaging and Shipping:

- (a) All Goods to be delivered hereunder shall consist of factory new materials, unless expressly and agreed in writing by Buyer and shall be delivered with a valid Certificate of Conformity and any other quality documentation indicated within the Purchase Order.
- (b) Seller shall prepare and package the Goods to prevent damage or deterioration and shall use best commercial practice for packing and packaging of items to be delivered under the Contract, unless otherwise specified in the Purchase Order.
- (c) A packing slip provided with the shipment shall specify Buyer’s Purchase Order Number, Line Item and/or Part Number.

5. Inspection and Acceptance:

- (a) Buyer’s acceptance of the Goods is subject to Buyer’s inspection within twenty (20) days after receipt at Buyer’s facility or such other place as may be designated by Buyer, notwithstanding any payment or prior test or inspection. No inspection performed by Buyer (and/or Buyer’s customer, if applicable) shall in any way relieve Seller or its suppliers of their obligation to furnish all Goods or Services in strict accordance with the Contract.
- (b) Seller and its suppliers shall establish and maintain a quality control and inspection program. Subject to applicable national security regulations, Buyer and Buyer’s representatives shall have the right of access, on a non-interference basis, to any area of Seller’s or Seller’s supplier’s premises where any part of the work is being performed. Seller shall, without additional costs to Buyer, provide all reasonable in-plant accommodations, facilities, and assistance for the safety and convenience of the Buyer and the Buyer’s representatives in the performance of their duties.

- (c) Seller shall keep and maintain proper and adequate inspection, test and related records, which shall be available for inspection by the Buyer or Buyer’s representative and shall allow copies to be made and extracts to be taken and shall furnish all information which may be reasonably required by Buyer or Buyer’s representative.
- (d) Acceptance shall be conclusive, except for latent defects, fraud, or gross mistakes amounting to fraud.

6. Rejection:

If Seller delivers nonconforming Goods or Services, Buyer may, at its option and Seller’s expense: (i) return the Goods for refund or credit; (ii) require Seller to promptly correct or replace the Goods or Services; (iii) correct the nonconformance; or (iv) obtain conforming Goods or Services from another source. Buyer shall specify the reason for any return or rejection of nonconforming Goods or Services. Seller shall be liable for any increase in costs, including excess re-procurement costs, attributable to Buyer’s rejection of the nonconforming Goods or Services.

7. Invoices:

- (a) Invoices may be mailed when Goods are delivered in accordance with the delivery terms or when the Services are furnished, but the time for payment shall not commence until Buyer’s actual receipt of the certificate of Conformity and/or any other documentation required in the Purchase Orders, or upon satisfactory completion of the Services.
- (b) Buyer shall promptly pay Seller the amount due within forty-five (45) days of receipt of invoice, unless the invoiced amount is in dispute. Buyer may withhold payment for non-conforming Goods or Services.

8. Taxes

- (a) The selling prices include, and SUPPLIER shall be responsible for, the payment of any taxes measured by the income of SUPPLIER and imposed or levied by a taxing authority, located in the United States in connection with Supplies or Services prior to or as a result of their sale and delivery, other than taxes from which exemptions may ordinarily be secured by reason of export. BUYER agrees to furnish (without charge) evidence of exportation or other evidence of tax or duty exemption acceptable to the taxing or customs authorities when requested by SUPPLIER

9. Changes:

- (a) By written order, Buyer may from time to time direct changes within the general scope of the Contract in any one or more of the following: (i) technical requirements; (ii) shipment or packing methods; (iii) place of delivery, inspection or acceptance; (iv) reasonable adjustments in quantities, delivery schedules or both; (v) amount of Buyer-furnished property; (vi) time of performance; and (vii) place of performance.
- (b) If any such change causes an increase or decrease in the price or in the time required for performance, Seller shall promptly notify Buyer thereof and assert its claim for equitable adjustment within thirty (30) days after the change is ordered, and an equitable adjustment shall be made. However, nothing in this provision, including any disagreement with Buyer as to any equitable adjustment, shall excuse Seller from proceeding immediately with the directed change(s). Changes shall not be binding upon Buyer except when specifically confirmed in a written Purchase Order or Change Order.

10. Force Majeure:

Neither Buyer nor Seller shall be liable for any failure to perform under the Contract if such failure is due to events which are beyond the reasonable control and without the fault or negligence of such affected party. The following events, for illustrative purposes only and without limitation, shall constitute force majeure under the Contract:

- (a) acts of God or of a public enemy
- (b) acts of Government
- (c) fires
- (d) floods
- (e) epidemics
- (f) quarantine restrictions
- (g) strikes



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- (h) freight embargoes
- (i) unusually severe weather

In each case, the failure to perform must be entirely beyond the reasonable control and without the fault or negligence of the affected party. Each party shall give the other immediate written notice of any event that such party claims is a Force Majeure condition that would prevent the party from performing its obligations hereunder, and of the cessation of the condition. A party's notice under this Section shall include the party's good faith estimate of the likely duration of the Force Majeure condition.

11. Termination for Convenience:

- (a) Buyer may, by notice in writing, direct Seller to terminate the Contract or work under the Contract in whole or in part, at any time, and such termination shall not constitute a default. In such event, Buyer shall have all rights and obligations accruing to it either at law or in equity, including Buyer's rights to title and possession of the Goods and materials paid for. Buyer may take immediate possession of all work so performed upon notice of termination.
- (b) Seller shall immediately stop work and limit costs incurred on the terminated work.
- (c) Buyer, after deducting any amount(s) previously paid, shall reimburse Seller for the actual, reasonable, substantiated and allowable costs, plus a reasonable profit for work performed to date of termination, with the total amount to be paid by the Buyer subject to good faith negotiations between Buyer and Seller, but not in any event to exceed the lesser of \$100,000 or the total price on the order for the terminated work.

12. Termination for Default:

- (a) Buyer may, by written notice of default to Seller, terminate the Contract in whole or in part, or, at Buyer's sole discretion, require the Seller to post such financial assurance as Buyer deems reasonably necessary, if the Seller fails to: (i) deliver the Goods or perform the Services within the time specified in the Contract or any Purchase Order issued hereunder, or any extension thereof granted by Buyer; (ii) make progress, so as to endanger performance of the Contract and any Purchase Orders issued hereunder; or (iii) perform any of the other provisions of the Contract.
- (b) Buyer may require Seller to transfer title and deliver to Buyer, in the manner and to the extent directed by Buyer, any partially completed Goods and raw material, parts, tools, dies, jigs, fixtures, plans, drawings, Services, information and contract rights (collectively "Materials") as Seller has produced or acquired for the performance of the Contract, including the assignment to Buyer of Seller's subcontracts. Seller further agrees to protect and preserve property in the possession of Seller in which Buyer has an interest. Payment for completed Goods delivered to and accepted by Buyer shall be at the Contract price. Payment for unfinished Goods or Services, which have been delivered to and accepted by Buyer and for the protection and preservation of property, shall be at a price determined in the same manner as provided in the Termination for Convenience provision hereof except that Seller shall not be entitled to profit. Buyer may withhold from Seller moneys otherwise due Seller for completed Goods and/or Materials in such amounts as Buyer determines necessary to protect Buyer against loss due to outstanding liens or claims against said Goods and Materials.
- (c) Seller shall promptly notify Buyer if Seller is the subject of any petition in bankruptcy. In the event of Seller's bankruptcy, Buyer may require Seller to post such financial assurance, as Buyer, in its sole discretion, deems necessary. Failure to post such financial assurance upon ten (10) days written notice shall constitute a default under the Contract. The rights and remedies of Buyer in this clause are in addition to any other rights and remedies provided by law or under the Contract.

13. Compliance with Law:

- (a) Seller shall comply with the applicable provisions of all federal, state, provincial and local laws and ordinances and all lawful orders, rules, and regulations thereunder; and such compliance shall be a material requirement of the Contract. This shall include, but shall not be limited to compliance with FAA, DOT and other transportation regulations; as well as the Hazard Communication Standard promulgated pursuant to the Occupational Health and Safety Act.
- (b) Seller shall control the dissemination of and access to technical data, information and other items received under the Contract in accordance with applicable US export control laws and regulations.

14. Ethical Standards of Conduct:

Seller shall neither receive nor give any gifts or gratuities in connection with the Contract. Seller's employees are required to conduct company business with integrity and maintain a high standard of conduct in all business-related activities. Seller shall not participate in any unethical conduct during performance of the Contract. Seller shall not engage in any

personal, business, or investment activity that may result in a conflict of interest, whether real or perceived.

15. Proprietary Information and Rights:

- (a) Unless the Buyer and Seller have executed a more specific non-disclosure agreement relating to the Contract, all specifications, information, data, drawings, software and other items supplied to Buyer by Seller shall be disclosed to Buyer without any restrictive rights on a non-proprietary basis.
- (b) All specifications, information, data, drawings, software and other items which are: (i) supplied to Seller by Buyer; or (ii) paid for by Buyer during the performance of the Contract shall be the exclusive property of Buyer and shall be treated as proprietary to Buyer by Seller and shall not be disclosed to any third party without Buyer's express written consent. Seller agrees not to use any such furnished information except to perform the Contract.

16. Intellectual Property:

- (a) Any work, writing, idea, discovery, improvement, invention (whether patentable or not), trade secret or intellectual property of any kind first made or conceived by Seller in the performance of the Contract or which is derived from the use of information supplied by Buyer shall be the exclusive property of the Buyer. Seller shall disclose promptly all such works, writings, ideas, discoveries, improvements, inventions, trade secrets or intellectual property to Buyer, and shall execute all necessary documents to perfect Buyer's title thereto and to obtain and maintain effective protection thereof. Any work produced under the Contract is deemed a work made for hire to the extent permitted by applicable law, and, to the extent not so permitted, shall be assigned to, and shall be, the exclusive property of, the Buyer.
- (b) Seller hereby grants to Buyer, and to Buyer's subcontractors and customers, in connection with the use, offer for sale, or sale of Goods or Services provided to or work being performed for Buyer, an irrevocable, transferable, non-exclusive, paid-up worldwide license under any and all intellectual property (whether domestic or foreign), including patents, copyrights, industrial designs and/or mask works owned or controlled by Seller at any time or licensed to Seller.
Seller hereby grants to Buyer, and to Buyer's subcontractors and customers, a perpetual, transferable, non-exclusive, paid-up worldwide license to reproduce, distribute copies of, perform publicly, display publicly, or make derivative works from any software or software documentation included in or provided with Goods or Services under this Contract as reasonably required by Buyer in connection with Buyer's testing or use of the Goods or Services.

17. Goods Warranty:

Unless stated otherwise in the Purchase Orders issued under these Terms and Conditions, Seller warrants that all Goods provided hereunder shall be free from defects in design, materials and performance, and in compliance with all applicable specifications and drawings, for a period of one year following final acceptance. If this Contract is for delivery of Goods, Seller shall observe, comply with and afford Buyer all applicable warranties contained in the applicable Uniform Commercial Code Sale of Goods Statute, and Seller hereby acknowledges that Buyer does not waive or accept any disclaimer of any such warranties. If any nonconformity under this warranty appears within the warranty period, Seller shall promptly and diligently repair or replace such nonconformity at no cost to Buyer (including any transportation costs associated therewith). If such repair or replacement is not made in a timely manner, then Buyer may, at its election and in addition to any other remedies available at law or in equity, repair or replace, or have repaired or replaced, such nonconformity at Seller's expense.

18. Services Warranty:

Unless stated otherwise in the Purchase Orders issued under these Terms and Conditions, Seller warrants all Services against defects in performance for a period of one year following completion. Seller warrants that it has and will maintain sufficient trained personnel to promptly and efficiently execute the Services contemplated under the Contract. Seller further warrants that the Services shall be performed to at least the standard of performance reasonably expected of qualified and competent service providers in Buyer's geographic area. If any nonconformity under this warranty appears within the warranty period, Seller shall promptly and diligently correct such nonconformity (by re-performance or otherwise) at no cost to Buyer. If such correction is not made within a timely manner, then Buyer may, at its election and in addition to any other remedies available at law or in equity, correct such nonconformity at Seller's expense.

19. Intellectual Property Warranty:



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Seller warrants that the sale, offering for sale, use, or incorporation into manufactured goods and materials (including software) of all machines, parts, components, services, devices, material, and rights furnished or licensed hereunder which are not of Buyer's design, composition, or manufacture does not and will not infringe any valid patent, copyright, trademark, or other proprietary or intellectual property rights.

20. Extension to Buyer's Customers:

All warranties furnished pursuant to the Contract extend not only to Buyer but also to Buyer's customers.

21. Indemnification:

- (a) Seller shall indemnify hold harmless (and at Buyer's request defend Buyer, its officers, directors, customers, agents and employees, against all claims, liabilities, damages, losses and expenses, including attorneys' fees and court costs arising out of or in any way connected with the Goods or Services provided under the Contract, including, without limitation, (i) the Seller's breach of any warranty contained herein; (ii) any claim based on the death or bodily injury to any person, or destruction or damage to property, (iii) Seller failing to satisfy the applicable taxing authority's guidelines for an independent contractor; (iv) any claim based on the negligent acts or omissions or willful misconduct of Seller or any Seller's agents, subcontractors, employees or anyone acting on behalf of Seller; (v) Seller's violation of any applicable laws or regulations; and (vi) any claim by a third party against Buyer alleging that the Goods or Services (including but not limited to software provided therewith), the results of such Services, or any other products or processes provided by Seller under this Contract, infringe a patent, copyright, trademark, trade secret or other proprietary right of a third party, whether such are provided alone or in combination with other products, software or processes. Buyer shall provide Seller with prompt written notice of any claims hereunder, shall allow Seller to control the defense and/or settlement of any such claims, and shall reasonably cooperate with Seller in the defense and/or settlement thereof (at Seller's expense). Seller agrees to pay or reimburse all costs that may be incurred by Buyer in enforcing this indemnity, including attorneys' fees.
- (b) Should Buyer's use, or use by its distributors, subcontractors or customers, of any Goods or Services purchased from Seller be enjoined, be threatened by injunction, or be the subject of any legal proceeding, Seller shall, at its sole cost and expense, either: (i) substitute fully equivalent non-infringing Goods or Services; (ii) modify the Goods or Services so that they no longer infringe but remain fully equivalent in functionality; or (iii) obtain for Buyer, its distributors, subcontractors or customers the right to continue using the Goods or Service. If Buyer, in its sole discretion, determines that none of the foregoing are possible, then Buyer may direct Seller to refund all amounts paid for the infringing Goods or Services.
- (c) Seller shall without limitation as to time, defend, indemnify and hold Buyer harmless from all liens which may be asserted against property covered hereunder, including without limitation mechanic's liens or claims by Seller's employees arising under Worker's Compensation or Occupational Health and Safety laws and from all claims for injury to persons or property arising out of or related to such property unless the same are caused solely and directly by Buyer's negligence.

22. Insurance.

If the Seller, or Seller's employees, agents or subcontractors will enter upon Buyer's property in the performance of the Contract, Seller shall maintain insurance with an insurer rated A or higher by A.M. Best in the following amounts:

- (a) Comprehensive General Liability (including Products and Completed Operations Coverage) \$5 Million;
- (b) Workers Compensation - statutory levels.
- (c) Employers Liability - \$1MM Bodily Injury by accident – Each Accident; \$1MM Bodily Injury by Disease – Each Employee; \$1MM Bodily Injury by Disease – Policy Limit
- (d) Motor Vehicle - If the Seller will bring or operate a vehicle beyond the visitor lot of our facility, we require at least \$1MM Combined Single Limit in coverage.

Seller shall name Buyer as an additional insured under the above policies and, upon request, shall provide a copy of the Certificate of Insurance to Buyer evidencing compliance with this Article.

23. Release Of Information:

Seller shall not publish any information developed under this Contract, nor disclose, confirm, or deny any details about the existence or subject matter of this Contract, or use Buyer's name in connection with Seller's sales promotion or publicity without prior written approval of the Buyer.

24. Governing Law/Disputes

The Contract (including these Terms and Conditions) shall be interpreted in accordance with the laws of the State of New York, without resort to its Conflict of Law rules, and in accordance with its fair meaning and not strictly against either party. The parties shall attempt to amicably resolve all disputes arising from or related to the Contract. If the parties are unable to amicably resolve any dispute within a reasonable period of time, then the parties may mutually agree upon alternate dispute resolution or either party may file suit in a court of competent jurisdiction in the State where the Buyer is located. Pending final resolution of a dispute hereunder, Seller shall proceed diligently with the performance of the Contract and in accordance with all the Terms and Conditions contained herein and with the Buyer's written direction thereof. Buyer and Seller shall each bear its own costs in any dispute hereunder.

25. Assignments and Subcontracting:

Neither the Contract nor any interest herein nor claim hereunder may be transferred, novated, assigned or delegated by Seller, nor may all or substantially all of the Contract be further subcontracted by Seller without the prior written consent of Buyer. Buyer may assign the Contract, without Seller consent, to common ownership Company or subsidiary or in connection with a merger, acquisition, or sale to a third party of substantially all of its assets.

26. Order of Precedence:

In the event of a conflict between these Terms and Conditions and other portions of the Contract, the order of precedence shall be:

- (a) any typed provisions on the face of Buyer's Purchase Order specifically modifying the terms of the Contract;
- (b) these Terms and Conditions; and
- (c) any other provisions set forth in the Buyer's Purchase Order including any terms and conditions stated or referenced therein.

27. Independent Contractor Status:

Seller is, and shall remain at all times, an independent contractor during the performance of the Contract.

28. Communication with Buyer's Customer:

Buyer shall be solely responsible for any and all communication with Buyer's customer regarding the Contract.

29. Confidentiality

The terms and conditions of these Terms and Conditions are confidential between the parties and shall not be disclosed to anyone else, except as may be necessary to effectuate its terms.

30. Survival:

All of the provisions of the Contract shall survive termination (whether for convenience or default), suspension or completion of the Contract unless they are clearly intended to apply only during the term of the Contract.

31. Counterfeit Electronic Parts

- (a) For purposes of this Article, the term "electronic part" means an integrated circuit, a discrete electronic component (including, but not limited to, a transistor, capacitor, resistor, or diode) or a circuit assembly and includes any embedded software or firmware. The term "counterfeit electronic part" means an unlawful or unauthorized reproduction, substitution, or alteration that has been knowingly mismarked, misidentified, or otherwise misrepresented to be an authentic, unmodified electronic part from the original manufacturer, or a source with the express written authority of the original manufacturer or current design activity, including an authorized aftermarket manufacturer. Unlawful or unauthorized substitution includes used electronic parts represented as new, or the false identification of grade, serial number, lot number, date code, or performance characteristics.
- (b) Seller shall only purchase electronic parts to be delivered or incorporated in the goods to Buyer directly from the Original Component Manufacturer (OCM)/Original Equipment Manufacturer (OEM) or through an OCM/OEM authorized distribution chain. Seller shall promptly notify Buyer in writing with all relevant information if Seller becomes aware or suspects that it has furnished any counterfeit electronic parts under the Order. When requested by Buyer, the Seller shall provide all relevant OCM/OEM documentation that authenticates the traceability of the affected items to the applicable OCM/OEM.
- (c) The Seller shall establish and maintain an acceptable counterfeit electronic part detection and avoidance system.



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- (d) This Article applies in addition to any quality provision, specification, statement of work or other provision included in or incorporated into the Contract addressing the authenticity of the electronic part. To the extent any such provisions conflict with this Article, this Article prevails.
- (e) If any counterfeit electronic part is delivered or incorporated in the goods ordered under the Contract, the Seller shall, at its expense, promptly replace such counterfeit electronic parts with electronic parts conforming to the requirements of the Contract. Notwithstanding any

other provisions in the Contract, the Seller shall be liable for all costs relating to or associated with such counterfeit electronic parts including, without limitation, the Buyer's costs of removing any counterfeit electronic parts, of installing replacement electronic parts and of any testing necessitated by the reinstallation of electronic parts after the counterfeit electronic parts have been replaced. The remedies contained in this Article are in addition to any remedies available to Buyer at law, in equity or under any other provision of this Order.