

**GENERAL TERMS AND CONDITIONS  
POWERGRANATE.CO**

*Effective Date: April 23, 2024*

Please read these General Terms and Conditions (“Agreement”, “General Terms” or “Terms”) carefully and completely before using <https://powergranate.co> (“Website”) and engaging in our service (the “Service”) or purchasing our products (the “Product”, as defined in section IV hereof) provided through or in connection with the Website and/or by PowerGranate LLC, a Texas Limited Liability Company and/or one of its subsidiaries or affiliates (“PowerGranate”, “Company”, “us” or “we”). We offer this Website, including all information, tools and services available from this Website to you, the user, conditioned upon your acceptance of all terms, conditions, policies and notices stated here. These Terms apply to all users of the Website, including without limitation users who are browsers, vendors, customers, merchants, and/ or contributors of content.

The Website allows (A) visitors to access the publicly available content, services and products, and (B) registered users to get our pricelists and offers, to place orders and to purchase our Product, and to place requests to become our distributors. Visitors and registered users are referred to herein individually as “user” and collectively as “users”; “you” and “your” refers to users and Clients.

THESE TERMS INCLUDE AN ARBITRATION CLAUSE AND A WAIVER OF YOUR RIGHT TO PARTICIPATE IN A CLASS ACTION OR REPRESENTATIVE LAWSUIT.

**I. ACCEPTANCE OF THIS AGREEMENT**

- 1.1. By using the Website and/or purchasing the Product, you expressly agree to be bound by this Agreement between you and Company, which incorporates by this reference any additional terms and conditions posted by Company through the Website, or otherwise made available to you by Company, including Legal Disclaimers, Privacy Policy, Cookie Policy, and to any additional rules, policies and guidelines that we post on the Website (“Agreement”). The information and resources contained on and accessible through the Website are made available by Company and its suppliers and vendors, and/or other third parties, as applicable, in each case subject to your agreement to the terms and conditions of this Agreement.
- 1.2. We reserve the right to update, change or replace any part of this Agreement by posting the updated Agreement to the Website. Any changes in updated Agreement will not apply to any dispute between you and us arising prior to the date on which we posted the updated Agreement, or otherwise notified you of such updated Agreement. It is your responsibility to periodically review the Website to determine if this Agreement has been updated and remain informed about any changes to it. We will also indicate at the top of the regulating document when it was last updated. Your continued use of the Website and/or purchase of Product following any updates to this Agreement shall constitute notice and acceptance of any such updates. Please, be aware that if you do not agree to any provision of the Agreement or do not accept its terms, you must not access to and use the Website and/or purchase our Product through it.
- 1.3. The current version of the Agreement supersedes all earlier versions and comprises the entire agreement between you and us regarding the Website using and the Product.

**II. ONLINE STORE TERMS AND USE OF WEBSITE**

- 2.1. We grant you permission to use the Website subject to the terms and conditions of this Agreement. Your use of the Website is at your own risk, including the risk that you might be exposed to content that is inaccurate, objectionable, incomplete, fails to provide adequate warning about potential risks or hazards, or is otherwise inappropriate.
- 2.2. By agreeing to these Terms, you represent that you are at least the age of majority in your state or province of residence, or that you are the age of majority in your state or province of

residence and you have given us your consent to allow any of your minor dependents to use this Website. You may not use our Website or Product for any illegal or unauthorized purpose nor may you, in the use of the Website, violate any laws in your jurisdiction (including but not limited to copyright laws). A breach or violation of any of the Terms will result in an immediate termination of this Agreement and any services available to you according to this Agreement.

- 2.3. By using the Website, you agree to comply with applicable laws of the United States, the state of Texas and your home country, including privacy laws that apply to data transferring. You agree that we cannot and will not be liable for any loss or damage arising from your failure to comply with the responsibilities specified in this Agreement. Company may, at any time in our sole discretion for any reason or no reason and without notice, refuse to provide any user with access to the Website; offer opportunities to some or all users.
- 2.4. The Website is not intended for use by any person who is a resident of a country where it would be prohibited or against local laws to provide the information on the Website. Any products/services described on the Website are only available to persons in jurisdictions in which Company is permitted to market and sell such products/services, including the Product.
- 2.5. We reserve the right to refuse service to anyone for any reason at any time.
- 2.6. We are not responsible if information made available on this Website is not accurate, complete or current. The material on this Website is provided for general information only and should not be relied upon or used as the sole basis for making decisions without consulting primary, more accurate, more complete or more timely sources of information. Any reliance on the material on this Website is at your own risk. We reserve the right to modify the contents of this Website at any time, but we have no obligation to update any information on our Website.
- 2.7. **Publicly available content.** Any visitor may access the publicly available content on the Website without any registration. In some cases, you may be directed to subscribe to some marketing and other materials without registration.
- 2.8. **Registered access.**
  - 2.8.1. When you set up a personal account with Company, you are creating a direct customer relationship with Company that enables you to access and/or utilize the various functions of the Website as a user, including placing orders/requests to become a distributor and purchasing the Product. As part of that relationship, you provide information to Company, including but not limited to your/your company's full legal name, business address, email address, shipping address, phone number and other data as may be applicable ("Registration Data"), that we may collect, use and disclose in accordance with our Privacy Policy.
  - 2.8.2. On registering, you may obtain a confidential user ID and password (collectively, "Credentials") for your individual use that must be used to access and use the Website. Only registered users may access the publicly unavailable content on the Website.
  - 2.5.3. By registering on the Website you agree, on your own behalf or on behalf of the business you represent: (i) to this Agreement; (ii) to provide true, accurate, current and complete registration data, (iii) to maintain and promptly update the registration data to keep it true, accurate, current and complete, (iv) for security reasons, to maintain the confidentiality of any Credentials obtained by you, (v) to not allow any other party to use your Credentials; (vi) to ensure that you properly exit from your account at the end of each session and to immediately notify us of any unauthorized use of your account or any other breach of security; and (vii) to take full responsibility for all activities that occur under any customer account created for your use.
  - 2.5.4. Company is not responsible for any loss or damage arising from your failure to comply with the foregoing requirements. If you provide any information that is untrue, inaccurate, not current or incomplete, or if Company has reasonable grounds to suspect that such information is untrue, inaccurate, not current or incomplete, Company may suspend or terminate your personal account and refuse any and all current or future use of the Website under such account. By submitting your information through the Website

for purposes of registration, you grant Company a perpetual, irrevocable, royalty-free, non-exclusive, assignable, sublicensable, transferable, fully-paid, worldwide license to use, copy, modify, prepare derivative works, reproduce, reformat, translate, analyze, commercialize, syndicate, distribute, transmit, and display this information in connection with Company's performance for you with regard to the Product.

### III. DEFINITIONS

- 3.1. **Client** shall mean a user of the Website, the Service and/or the Product of Company.
- 3.2. **Force Majeure Event** shall mean a fire, flood, explosion, strike, war, insurrection, embargo, government requirement, act of civil or military authority, act of God, or any similar event, occurrence or condition which is not caused, in whole or in part, by any of the parties, and which is beyond the reasonable control of the parties.
- 3.3. **Materials/Content** shall mean Client's IDs, email addresses, passwords, comments, text and data and any other forms of materials or information submitted by you through or otherwise in connection with the Website or/and Product, regardless of whether such information is posted publicly or with password protection.
- 3.4. **Personal account** shall mean a part of the software used by Company for purpose of rendering the Product to Client under this Agreement in the form of the Client's online account on the Website which Client may access and through which Client may place orders for the Product and receive technical support of Company (and/or other options if technically available).

### IV. PRODUCT

- 4.1. Company manufactures and distributes 100% fresh pomegranate arils, available at least in two sizes, and may manufacture and/or distribute other products made of fresh pomegranates (the "Product"). Certain Product or Service may be available exclusively online through the Website and may have limited quantities. Product may not be subject to return or exchange, according to our return policy.
- 4.2. We have made every effort to display as accurately as possible the colors and images of our Product that appear at the store. We cannot guarantee that your computer monitor's display of any color will be accurate.
- 4.3. We do not warrant that the quality of any Product, Service, information, or other material purchased or obtained by you will meet your expectations, or that any errors in the Service will be corrected. Delivering the Product is subject to availability of third-party products and services and to acceptance by Company of an order placed by Client online or telephonically where the specification of the Product, time/period of delivery, the price of the Product and other specific terms and conditions of the order shall be established.
- 4.4. We reserve the right, but are not obligated, to limit the sales of our Product or Service to any person, geographic region or jurisdiction. We may exercise this right on a case-by-case basis. We reserve the right to limit the quantities of any Product or Service that we offer. All descriptions of Product or Product pricing are subject to change anytime without notice, at our sole discretion. We reserve the right to discontinue any Product or Service at any time.
- 4.5. We reserve the right to refuse any order you place with us. We may, in our sole discretion, limit or cancel quantities purchased per person, per household or per order. These restrictions may include orders placed by or under the same customer account, the same credit card, and/or orders that use the same billing and/or shipping address. In the event that we make a change to or cancel an order, we may attempt to notify you by contacting the e-mail and/or billing address/phone number provided at the time the order was made. We reserve the right to limit or prohibit orders that, in our sole judgment, appear to be placed by dealers, resellers

or distributors, unless you have contracted with us as a dealer, reseller or distributor of our Product.

## **V. PRICE OF PRODUCT, COSTS AND PAYMENT**

- 5.1. Price of the Product and costs are specified on the Website or are subject to determination as specified in this Agreement or on the Website. Client shall make all payments under this Agreement in U.S. dollars. Unless otherwise provided in these Terms or agreed by the parties, all payment towards the Product shall be due and payable before the Product shipping by Company. The payment shall be deemed made at the moment of receipt of the funds on the bank account of Company.
- 5.2. Client shall pay Company in full all possible costs and other charges incurred by Company related to the Product, including bank fees for transfer to and receipt of payments by Company under this Agreement and other charges of third parties billed to Company if related to Product. In addition, Client is responsible for any taxes applicable to Client's transactions. Client shall use only OUR type of bank transfer paying to Company.
- 5.3. If the invoice, or any amount due under this Agreement remains unpaid 10 days after its due date, Client shall pay Company a default interest (penalty) at the rate of 0.02% per day on all amounts past due from the date that such amount became due and payable. If any payment due is not made by you, Company may, in addition to its other remedies, at its sole discretion and without notice to you, (a) suspend its performance under this Agreement, or (b) terminate this Agreement and your access to your account at the Website and the use of the account. If legal action is necessary to collect fees or charges due from you, then you shall reimburse Company for all expenses incurred in collecting the fees and charges, including all attorney fees and other expenses.
- 5.4. If Client does not agree with the amount of payment, Client shall submit detailed objections to Company via email within five (5) business days upon payment or receiving the relevant invoice.
- 5.5. Prices for our Product are subject to change without notice. We reserve the right at any time to modify or discontinue the Service (or any part or content thereof) without notice at any time. We shall not be liable to you or to any third party for any modification, price change, suspension or discontinuance of the Service.

## **VI. MATERIALS**

- 6.1. The Website is not designed or intended to be used as a disaster recovery or emergency data storage facility and you are responsible for creating and maintaining copies of your documents and materials and any other content (including any orders, pricelists, invoices, as applicable) received or placed through the Website or your account.
- 6.2. COMPANY DOES NOT CONTROL THE DATA OR MATERIALS POSTED OR SUBMITTED TO THE WEBSITE, NOR DO WE HAVE ANY OBLIGATION TO MONITOR, SCREEN, POLICE OR EDIT THOSE MATERIALS FOR COMPLIANCE WITH APPLICABLE LAWS OR THIS AGREEMENT. YOU SHOULD USE CAUTION AND COMMON SENSE WHEN USING THE WEBSITE AND SERVICE.

## **VII. INTELLECTUAL AND OTHER PROPRIETARY RIGHTS**

- 7.1. Subject to your compliance with this Agreement, Company grants to you, for so long as you are permitted by Company to use the Website, a limited, revocable, non-exclusive, non-transferable license to access, use and display the Website (including any content or other materials generally made available through the Website to users of the Website) solely for your non-commercial use, unless otherwise specified by a contract between you and Company. No

title, rights, or interests in any downloaded materials from the Website are afforded you as a result of such downloading.

- 7.2. As Company owns rights to the Website and all the content on the Website, including text, graphics, legends, customized graphics, original photographs, data, images, music, audio and video clips, typefaces, titles, button icons, logos, designs, words or phrases, page headers, and software as well as the design, coordination, arrangement, enhancement, and presentation of this material, the Website and all the content on the Website is subject to trademark, copyright, and/or other intellectual property rights held by Company and its suppliers and vendors. Any trademark or copyright notices may not be deleted or altered in any way. Company's trademarks and copyrights may not be used in connection with any products or services that are not offered by or on behalf of Company. You acknowledge that these rights are valid and protected in all forms, media, and technologies existing now or hereinafter developed.
- 7.3. Copying, publishing, broadcasting, re-broadcasting, webcasting, transmitting, modifying, deleting, augmenting, distributing, downloading, storing, reproducing, sublicensing, adapting, creating derivative works of any content available through the Website, or posting this content or selected portions of this content in any manner on any network computer, broadcast media, or other technologies existing now or hereinafter developed for unauthorized publication or commercial use without the prior written consent of Company is strictly prohibited. You hereby agree not to reproduce, duplicate, copy, sell, resell, decompile, disassemble, or exploit for any commercial purposes any portion of the Website, use of the Website, or access to the Website, or to collect any information about the Website users, or otherwise systematically download and store the Website content. You agree that you will not send, upload, post, reproduce, transmit or distribute any communication, content or material of any type through the Website or otherwise to Company that infringes or violates any rights of any party or violates this Agreement.
- 7.4. If you submit or otherwise provide to Company any communications, content or material for publicly available placement on the Website, including, without limitation, any idea, concept or invention, you hereby irrevocably grant to Company an unrestricted, worldwide, perpetual, sublicensable (through multiple tiers), royalty-free license to use, reproduce, display publicly, perform, publish, transmit, distribute and otherwise exploit such materials in any medium and for any purpose, and you further agree that Company is free to use any ideas, concepts or know-how that you or individuals acting on your behalf provide to Company in accordance with the foregoing license grant.
- 7.5. Client represents and warrants that Company's use of any and all materials or content furnished by Client hereunder will not infringe any Intellectual Property Right of any third party.
- 7.6. The Digital Millennium Copyright Act of 1998 (the "DMCA") provides recourse for copyright owners who believe that material appearing on the Internet infringes their rights under U.S. copyright law. If you believe in good faith that materials available on the Website infringe your rights under U.S. copyright law, you may send to Company a written notice by mail, e-mail or fax, requesting that Company remove such material or block access to it. If you believe in good faith that Company has wrongly filed a notice of copyright infringement against you, the DMCA permits you to send to Company a counter-notice. Notices and counter-notices must be sent in writing and meet the then-current statutory requirements imposed by the DMCA (see <http://www.copyright.gov> for details), which, with respect to notices of infringement, currently include, among other requirements, the following:
  - Sufficient information identifying the copyrighted work(s) believed to be infringed;
  - Sufficient information identifying the allegedly infringing material(s) and the location of such material(s) in order to permit Company to locate such material(s);
  - A statement from the owner (or the owner's authorized representative) of the copyrighted work(s) believed to be infringed that such owner or authorized representative has a good faith belief that the allegedly infringing materials are used in a manner not authorized by the copyright owner, its agent, or the law;
  - Contact information for the complaining party, including a mailing address, a telephone number and an email address;

- A statement that the information in the notification is accurate and, under penalty of perjury, that the complaining party is authorized to act on the copyright owner's behalf;
- A signature or the electronic equivalent from the owner (or the owner's authorized representative) of the copyrighted work(s) believed to be infringed.

Notices and counter-notices must be sent in writing to Company to the mail or email address specified in this Agreement.

## **VIII. REPRESENTATIONS, DISCLAIMER OF WARRANTY**

- 8.1. Each party warrants that it has full capacity and authority, and all necessary licenses, permits and consents to enter into and perform this Agreement and that those signing this Agreement are duly authorized to bind the party for whom they sign.
- 8.2. Company represents and warrants that it will perform the Service and deliver the Product: (a) in a good, timely, efficient, professional and workmanlike manner; and (b) using personnel who are qualified and fully familiar with the technology, process and procedures to be used to deliver the Product.
- 8.3. Although Company reserves the right to correct any errors, omissions, or inaccuracies, we do not accept any responsibility for the accuracy, reliability, currency, or completeness of any information, content, materials, services, products, functionality or other resources (collectively, "Resources") available on or accessible through the Website (even typographical or imaging errors), including the substance, accuracy, or sufficiency of any service or product information listed on the Website. Further, Company does not represent that the Website will operate without interruption or error, nor do we provide any assurances of the availability or usability of the online services.
- 8.4. Company does not accept any liability for the consequences arising from the application, use, or misuse of any resources contained on or made available through the Website, including any injury and/or damage to any person or property as a matter of product liability, negligence, or otherwise.
- 8.5. Company will attempt to keep the information, services and resources accessible through the Website timely and accurate, but make no guarantees, and disclaim any implied warranty or representation about the Website's accuracy, relevance, timeliness, completeness, reliability, security or appropriateness for a particular purpose.
- 8.6. Without limiting the generality of the foregoing, Company makes no representation or warranty that the quality of Product, or any goods, services, information or other materials purchased or obtained through the Website will meet your expectations, or that any password protection or other security measures for the content that you may use or allow others to use in connection with the Website and Product will prevent unauthorized access to such content, or that any such content will not be accessed or misused by any other party.
- 8.7. Company does not endorse any claims about the efficacy of the Product. Company specifically disclaims any guarantee or warranty, express or implied, with respect to any Product. No information conveyed by Company either orally or in writing shall create such a warranty.
- 8.8. Your access and use of the Service, Website and any other websites, including any resources contained on, or otherwise made available by, them, and of the Product is solely at your own risk. When rendering the Service requires remote access to your device, it is your responsibility to allow such access to Company and you agree that Company is not responsible for any damage to your device, programs or information occurred because of such access based on your permission.
- 8.9. You represent and warrant that you have the right to use any credit card or other method of payment that you submit in connection with the purchase of the Product. Further terms and conditions related to payment transactions may apply.

- 8.10. COMPANY DISCLAIMS ALL EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES REGARDING THE INFORMATION, CONTENT, SERVICE, PRODUCT, MERCHANDISE, MATERIALS, FUNCTIONALITY, AND ANY OTHER RESOURCES AVAILABLE ON OR ACCESSIBLE THROUGH THE WEBSITE, INCLUDING (WITHOUT LIMITATION) ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. ALL SUCH INFORMATION, CONTENT, SERVICE, PRODUCT, MERCHANDISE, MATERIALS, FUNCTIONALITY AND OTHER RESOURCES ARE MADE AVAILABLE "AS IS" AND "AS AVAILABLE" WITHOUT WARRANTY OF ANY KIND.
- 8.11. The Website may contain links to, or otherwise make available, third-party sites, services, products, information, content, materials, merchandise, functionality and/or other resources ("Third – Party Goods and Resources"). These links and access are provided for your convenience and reference only. Company does not control such Third – Party Goods and Resources and, therefore, Company is not responsible for such Third – Party Goods and Resources, or any content posted on or made available by such Third – Party Goods and Resources. Be aware that Company does not control, makes no guarantees about, and disclaims any express or implied representations or warranties about such Third – Party Goods and Resources, including without limitation the security of any materials, or the accuracy, relevance, timeliness, completeness, or appropriateness for a particular purpose of the information or the resources contained on or made available by such Third – Party Goods and Resources or any other websites. Company reserves the right to terminate such links or such access at any time. The fact that Company offers such links or access should not be construed in any way as an endorsement, authorization, or sponsorship of such Third – Party Goods and Resources, or any content made available thereby. Because some Third – Party Goods and Resources employ automated search results or otherwise link you to Third – Party Goods and Resources containing information that may be deemed inappropriate or offensive, Company cannot be held responsible for the accuracy, copyright compliance, legality, or decency of material contained in or made available by Third – Party Goods and Resources, including circular ads available online, and you hereby irrevocably waive any claim against Company with respect to such Third – Party Goods and Resources. Your use of any Third – Party Goods and Resources is subject to the Third Party's terms, conditions and policies applicable to such products, services or materials (such as Terms of Service or Privacy Policies of the providers of such products, services or materials). Company is not responsible for the privacy and security of any information you share with that Third Party, including your credit card or payment information. When you elect to receive these services from a Third Party, you agree to hold that Third Party responsible for any unauthorized use or disclosure of your personal information.

## **IX. LIABILITY AND LIMITATION OF LIABILITY**

- 9.1. We do not guarantee, represent or warrant that your use of our Service will be uninterrupted, timely, secure or error-free. We do not warrant that the results that may be obtained from the use of the Service will be accurate or reliable. You agree that from time to time we may remove the Service for indefinite periods of time or cancel the Service at any time, without notice to you. You expressly agree that your use of, or inability to use, the Service is at your sole risk. The Service and the Product delivered to you through the Website are (except as expressly stated by us) provided 'as is' and 'as available' for your use, without any representation, warranties or conditions of any kind, either express or implied, including all implied warranties or conditions of merchantability, merchantable quality, fitness for a particular purpose, durability, title, and non-infringement.
- 9.2. If Client has any complaint regarding the Product or Service, Company shall respond to this complaint upon the written request of Client sent via e-mail and stating the detailed description of Client's demands and, if this complaint is reasonable, shall remedy the lacks of the Service or drawbacks of Product within a reasonable period of time.
- 9.3. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL COMPANY OR OUR EMPLOYEES, OFFICERS, DIRECTORS, AGENTS, AFFILIATES, SUPPLIERS, VENDORS, LICENSORS, CO-BRANDERS OR PARTNERS (COLLECTIVELY,

"COMPANY PARTIES") BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES, OR ANY DAMAGES WHATSOEVER RESULTING FROM ANY LOSS OF USE, LOSS OF OR DAMAGE TO DATA, LOSS OF PROFITS, BUSINESS, BUSINESS INTERRUPTION, FAILURE TO ACHIEVE COST SAVINGS, LOSS OF ANTICIPATED SAVINGS OR PROFIT, LOSS OF GOODS, DEPLETION OF GOODWILL, LITIGATION, OR ANY OTHER PECUNIARY LOSS, WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY, OR OTHERWISE ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE USE, OPERATION OR PERFORMANCE OF THE SERVICE, WITH THE DELAY OR INABILITY TO USE THE PRODUCT, ANY DEFECTS IN THE PRODUCT, OR WITH THE PROVISION OF, OR FAILURE TO MAKE AVAILABLE, ANY INFORMATION, SERVICE, PRODUCT, MATERIALS, OR OTHER RESOURCES AVAILABLE ON OR ACCESSIBLE THROUGH THE WEBSITE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

- 9.4. Because some states or jurisdictions do not allow the exclusion or the limitation of liability for consequential or incidental damages, in such states or jurisdictions, our liability shall be limited to the maximum extent permitted by law.
- 9.5. You understand and agree that neither Company nor its suppliers or vendors are responsible for any claim, loss, or damage directly or indirectly resulting from your use of the Website or the information resources contained on or accessible through the Website. Company does not guarantee the sequence, accuracy, or completeness of any information or content on the Website and third-party service/product providers' resources and shall not be liable in any way to you or anyone else who may use the information or content or to whom the information or content may be furnished, for any delays, inaccuracies, unavailability, errors, or omissions therefrom or in the transmission or delivery of all or any part thereof or for any damage arising therefrom or occasioned thereby.
- 9.6. THE OPERATION OF THE WEBSITE MAY BE AFFECTED BY NUMEROUS FACTORS BEYOND COMPANY'S CONTROL. THE OPERATION OF THE WEBSITE, WHETHER BY COMPANY, ITS SUPPLIERS OR ITS VENDORS, MAY NOT BE SECURE. SECURITY AND PRIVACY RISKS CANNOT BE ELIMINATED. PASSWORD PROTECTION AND ANY OTHER SECURITY MEASURES MAY NOT PREVENT UNAUTHORIZED ACCESS TO CONTENT OR MATERIALS YOU MAY USE OR ALLOW OTHER PERSONS TO USE IN CONNECTION WITH THE WEBSITE OR THE PRODUCT, INCLUDING CONTENT POSTED OR SUBMITTED TO THE WEBSITE.
- 9.7. ANY LIABILITY ON THE PART OF THE COMPANY PARTIES, IN THE AGGREGATE, SHALL NOT EXCEED THE AMOUNT PAID BY CLIENT FOR THE PARTICULAR PRODUCT PROVIDED.
- 9.8. You acknowledge and agree that the limitations set forth above are fundamental elements of this Agreement and the Product would not be provided to you absent such limitations.
- 9.9. No action, suit or proceeding arising out of or in connection with this Agreement may be brought more than one year after the asserted cause of action arises, except that Company may bring an action for payment within three years after the date of the most recent payment of Client or after the asserted cause of action arises, whichever occurs later. The provisions of this Section shall not limit (a) liability for breach of any confidentiality obligation, (b) liability for infringement of the other party's Intellectual Property Rights, (c) the indemnity obligations set forth in this Agreement, (d) liability for payment of interest added by a court or an arbitration panel to a judgment entered in any action or proceeding under this Agreement.

## **X. INDEMNIFICATION**

- 10.1. You agree to indemnify, defend, and hold harmless Company, its parents, subsidiaries, affiliates, any related companies, suppliers, licensors and partners, and the directors, officers, managers, employees, agents, representatives, service providers and (sub)contractors from and against any and all third party claims, actions, demands, losses, damages, costs, liabilities



and expenses (including but not limited to attorneys' fees and court costs) arising out of, or in any way relating to your access to or use of the Website and Service and/or Product, your violation of this Agreement, any products or services purchased or obtained by you in connection with the Website, or your breach of any applicable law or third party rights. We reserve the right, at your expense, to assume the exclusive defense and control of any matter for which you are required to indemnify us and you agree to cooperate with our defense of these claims. You agree not to settle any such matter without the prior written consent of Company. We will use reasonable efforts to notify you of any such claim, action or proceeding upon becoming aware of it.

## **XI. CONFIDENTIALITY**

- 11.1. In case you use our Service and/or order the Product, it is anticipated that each of the parties to this Agreement will disclose to the other party proprietary or confidential information that is identified as confidential at the time of disclosure or which can reasonably be regarded as confidential ("Information"). Information may include customer information and business information of the parties, technical data, methodologies, software programs, and other information or data identified as confidential by the Disclosing party.
- 11.2. Each party shall be a "Disclosing Party" with respect to Information which that party discloses to the other and shall be a "Receiving Party" with respect to Information which that party receives from the other. The Receiving Party shall employ diligent efforts to maintain the secrecy and confidentiality of all Information. Such diligent efforts shall be at least equivalent to that degree of care which Receiving Party normally exercises with regard to its own property that it maintains secret and confidential, but in any event no less than a reasonable degree of care.
- 11.3. Information may be disclosed only for purposes of the Service/Product delivery and only to the Receiving Party's employees, contractors and agents on a need to know basis, provided that each such employee has previously been advised of the terms of this Agreement and each such contractor and agent has agreed in writing to be bound by an obligation of confidentiality no less restrictive than the terms hereof. The disclosure of Information shall not be construed to grant to the Receiving Party any ownership or other proprietary interest in such Information. The Receiving Party agrees that it does not acquire any title, ownership, or other intellectual property right or license by virtue of such disclosure.
- 11.4. A Receiving Party has no obligation with respect to any Information disclosed hereunder which: (a) was rightfully in Receiving Party's possession before receipt from Disclosing Party other than through prior disclosure by Disclosing Party; or (b) is or becomes a matter of general public knowledge through no breach of this Agreement; or (c) is rightfully received by Receiving Party from a third party without an obligation of confidentiality; or (d) is independently developed by Receiving Party. A Receiving Party may also disclose Information, without being in violation hereof, if and to the extent that such Information is disclosed under operation of law, governmental regulation, or court order, provided Receiving Party, if permitted by applicable law, first gives Disclosing Party notice and a reasonable opportunity to secure confidential protection of such Information.
- 11.5. Upon completing the use of the Service/Product, the Receiving Party shall (a) immediately cease using the Information, (b) promptly return or destroy all tangible embodiments of the Information, and (c) promptly certify in writing Receiving Party's compliance with this paragraph. The confidentiality obligations of a Receiving Party under this Agreement shall terminate five years after the Disclosing Party's receipt of Receiving Party's written certification required by this paragraph. Each party acknowledges that all records, documents, and other tangible evidence containing Information prepared by it or coming into its possession by virtue of its engagement hereunder are and will remain the property of the Disclosing Party and each party acknowledges that the other party may retain an archival copy of the information provided that the confidentiality obligations continue to apply.

- 11.6. If the Receiving Party breaches the provisions of this Section, the damage to the Disclosing Party may be irreparable. Therefore, in the event of a breach or threat of breach, Disclosing Party shall be entitled to seek equitable relief, in addition to any other relief available at law.

## **XII. OTHER RIGHTS AND OBLIGATIONS**

- 12.1. You agree to use the Website only for lawful purposes. You agree not to interrupt or attempt to interrupt the operation of the Website in any way. Any conduct by you that, in our sole discretion, restricts, inhibits, or interferes with the ability of any other user to enjoy the Website will not be tolerated, including by means of hacking or defacing any portion of the Website, or by engaging in spamming, flooding, or other disruptive activities. You are strictly prohibited from communicating on or through the Website (including in connection with any materials) any unlawful, harmful, offensive, threatening, abusive, libelous, harassing, defamatory, vulgar, obscene, profane, hateful, fraudulent, sexually explicit, racially, ethnically, or otherwise objectionable content of any sort, including, but not limited to, any content that encourages conduct that would constitute a criminal offense, give rise to civil liability, or otherwise violate any applicable local, state, national, or international law. We reserve the right to terminate or suspend your access to and use of the Website, or parts of the Website, without notice, if we believe, in our sole discretion, that it is in violation of any applicable law or it is harmful to our interests or the interests, including intellectual property or other rights, of another user or other third party partners, affiliates, sponsors, providers, licensors, or merchants.
- 12.2. It is your responsibility to ascertain and obey all applicable local, state, and federal laws (including minimum age requirements) regarding the possession, use and sale of any Product or Service on the Website. By submitting any information through the Website in connection with purchasing any Product or using the Service, you grant to us the right to provide such information to third parties for purposes of facilitating such purchase or use. Verification of information may be required prior to the acknowledgment or completion of any transaction.
- 12.3. You must not post, transmit or otherwise make available through or in connection with the Website any virus or other computer code, file or program that is potentially harmful or invasive or intended to damage or hijack the operation of, or to monitor the use of, any hardware, software or equipment.
- 12.4. You agree to provide true, accurate, current, and complete information in connection with the Website and the use of Service and/or Product. It is your responsibility to maintain and promptly update your personal account information to keep it true, accurate, current, and complete. If you provide any information that is fraudulent, untrue, inaccurate, incomplete, or not current, or we have reasonable grounds to suspect that such information is fraudulent, untrue, inaccurate, incomplete, or not current, we reserve the right to suspend or terminate your personal account without notice and refuse any and all current and future use of the Website and the Service and/or Product. Because any termination of your access to the Website may be effected without prior notice, you acknowledge and agree that we may immediately deactivate or delete your personal account and all related information and files in your personal account and bar any further access to such files or the Website and the Product. Furthermore, you agree that we shall not be liable to you or any third party for any termination of your access to your personal account and the Product.
- 12.5. You may be asked to supply a user ID and password and other information to register for purpose of using the Website and the Service. We may refuse to grant you a user ID that impersonates someone else, is or may be illegal, is or may be protected by trademark or other proprietary rights law, is vulgar or otherwise offensive, or may cause confusion, as determined by us in our sole discretion. For security reasons, user IDs and passwords must be non-obvious, hard-to-guess, confidential and changed on a regular basis, and you must log out at the end of each session. You are responsible for maintaining the confidentiality of your user ID and password and are fully responsible for all activities (including purchases, as applicable) that occur in connection with your user ID or password such that, for all purposes under this Agreement, any activities in connection with your user ID or password will be deemed to be your activities. You agree to immediately notify us of any unauthorized use of either your user

ID or password or any other breach of security. You further agree that you will not permit others, including those whose personal accounts have been terminated, to access the Website using your user ID or password. All user IDs and passwords remain the property of Company, and may be cancelled or suspended at any time by Company without any prior notice or any liability to you or any other person. Company is not under any obligation to verify the actual identity or authority of the user of any user ID or password. If Company, in its sole discretion, considers a password to be insecure, then Company may cancel the password.

- 12.6. You must respond promptly to all email and other correspondence from Company, including without limitation email and correspondence concerning complaints or concerns regarding your use of the Website, the Service and the use of your personal account.
- 12.7. Your submission of personal information through the Website is governed by our Privacy Policy, which, among other things, explains how we seek to protect the privacy of the personal information that you provided to us through the Website. When participating in sweepstakes or contests offered through the Website, you are urged to review the official rules and regulations governing those promotions. All materials submitted as part of a contest will be governed by contest rules published with the contest.
- 12.8. You are responsible for obtaining, maintaining and paying for all hardware, software and all telecommunications and other services needed for you to use the Website and the Service.
- 12.9. Client guarantees that Company's access to the device possessed by Client for purpose of rendering the Service does not violate any rights and interests of any third parties protected by law, as well as applicable laws. In case of any claims of any third parties concerning violation of their rights and interests and/or legislation by the Client's ads (including those that may be made against Company), Client shall resolve these issues on its own behalf, using its own resources and at its own expense and Company shall have the right to reimbursement by Client of expenses related to such claim disputes.
- 12.10. Company shall:
  - (1) provide the Product to Client on the terms and in the manner, specified in this Agreement;
  - (2) ship the Product within **three (3)** business days upon an acceptance of Client's order and payment for the Product and cost compensation, and Client's performance of other obligations specified in this Agreement;
  - (3) be given an extension of time for completion of any Product shipping if Client requests changes of the scope of Product order, or/and a delay is caused in whole or in part by an action or omission of Client, or/and a force majeure event occurs. The parties shall take all reasonable action to minimize the effects of the force majeure event and promptly notify the other party in writing of the nature and extent of the force majeure event causing its failure or delay in performance;
  - (4) have the right to stop or not to start shipping the Product, as well as to withdraw from rendering the Service in case of Client's violation of this Agreement. Company shall notify Client about such circumstances by sending an e-mail.
- 12.11. Client agrees that Company shall have the right to use the Product information rendered to Client and its results for the purpose of promotion/advertising Company's activity without additional approval of Client. Client also agrees that both during the term hereof, and for an unlimited period after termination of this Agreement (regardless of the reason of termination) Company shall have the right to use the trademarks, logos, trade names of Client, reviews specifically provided by Client, in the following ways:
  - place in the portfolio in the list of the clients/partners;
  - provide at various public events in the list of the clients/partners;
  - place online on the Website.

### **XIII. TERMINATION. REFUND POLICY**

- 13.1. This Agreement is effective until terminated by either party. If you no longer agree to be bound by this Agreement, you must cease your use of the Website. Your use of the Website is at your sole risk. If you are dissatisfied with the Website, its content, or any of the terms, conditions, and policies of this Agreement, your sole and exclusive legal remedy is to discontinue using the Website.
- 13.2. If you did not place an order of the Product with Company, you may terminate this Agreement at any time by closing your personal account, discontinuing any access to or use of the Website. If your order is in place and you want to terminate this Agreement, you have to perform all your payment obligations before the date of proposed termination.
- 13.3. Company may at any time and for any reason, with or without cause, and in their sole discretion, immediately: (i) suspend or terminate (in whole or in part) your authorization to use the Website and personal account you may have; (ii) suspend or terminate and permanently delete and destroy any user ID, password, URL, IP address or domain name; (iii) remove from the Website and permanently delete and destroy any content (or any components thereof) that you or others may have posted or submitted to the Website for any reason or no reason; (iv) restrict access to the content posted or submitted to the Website and to any personal account you may have; and (v) prohibit you from any future use of the Website; all without any prior notice or liability to you or any other person.
- 13.4. If this Agreement is terminated for any reason, then: (a) this Agreement will continue to apply and be binding upon you in respect of the accrued rights, remedies, obligations or liabilities existing at termination and your prior use of the Website (and any unauthorized further use of the Website), including payment of any charges accrued in connection with use of the Website and Product and your indemnification obligations; (b) Company may immediately remove from the Website and permanently delete and destroy any content that you or others may have posted or submitted to the Website without any prior notice or liability to you or any other person; (c) any rights granted to us under this Agreement will survive such termination.
- 13.5. In the event of Client's cancellation of the Product order and making an advance payment for the Product, before shipping the Product by Company, Company will return the advance payment amount to Client within eight (8) business days.
- 13.6. In the event of Client's cancellation of the Product's order and making an advance payment for the Product, upon Company having shipped the Product, Company is entitled to unilaterally withhold as a liquidation damage 100% of an advance payment and all costs/expenses related to the Product.

### **XIV. APPLICABLE LAW. DISPUTE RESOLUTION**

- 14.1. This Agreement, your use of the Website and the Service/ Product, all transactions through the Website, and all related matters, regardless of your location, are governed solely by, and construed solely in accordance with, the laws of the State of New York, excluding any rules of private international law or the conflict of laws which would lead to the application of any other laws.
- 14.2. In the event that any claim or dispute arises out of or in connection with this Agreement, the parties shall, following service of written notice by one party on the other, attempt to resolve amicably by way of good faith negotiations and discussions any such dispute or claim as soon as reasonably practicable (and in any event within 14 calendar days after such notice or by such later date as the parties may otherwise agree in writing). If the parties are unable to resolve the dispute or claim in accordance with this section, either party may commence proceedings in accordance with the arbitration clause below.
- 14.3. Any legal suit, action, proceeding, or dispute arising out of or related to this Agreement, or the transactions contemplated hereby may be instituted in the federal courts of the United States

of America located in New York or the courts of the State of New York, New York County. Each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, proceeding, or dispute. Each party (you and Company) hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts of the State of New York, New York County for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is improper or inconvenient venue for such proceeding. Each party (you and Company) hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof via registered or certified mail or overnight delivery (with evidence of delivery) to such party at the address in effect for notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. The parties (you and Company) hereby waive all rights to a trial by jury.

- 14.4. If either party shall commence an action or proceeding to enforce any provisions of the Agreement, then the prevailing party in such action or proceeding shall be reimbursed by the other party for its reasonable attorneys' fees and other costs and expenses reasonably incurred in connection with the investigation, preparation and prosecution of such action or proceeding.

#### **XV. ADA COMPLIANCE, DISABILITIES, ACCESSIBILITY**

- 15.1. We attempt to make the Website accessible to all individuals. If you use special adaptive equipment and encounter problems when using the Website, please report them via email. We will let you know if the information is available in an alternate format. We strive to meet World Wide Web Consortium (W3C) Recommendations and other web industry standards, specifically conforming to HTML 5, CSS Level 3, WAI-ARIA, and the U.S. Access Board's Section 508 guidelines. We are committed to making the Website available to as many people as possible and make every effort to ensure its communications are accessible to those with special needs, including those with visual, hearing, cognitive and motor impairments.

#### **XVI. MISCELLANEOUS**

- 16.1. Electronic communications. When you send emails or other electronic messages to Company or in connection with the Product, you are communicating with Company electronically and consent to Company's review and analysis of such messages and to receive return communications, if any, from Company electronically. You agree that all agreements, notices, disclosures and other communications that Company provides to you electronically satisfy any legal requirement that such communications be in writing. It is user's responsibility to turn on notifications, including but not limited to notifications from a third-party payment processing company. By accessing or using the Website, you consent to receive communications through emails, push notifications, text messages (including SMS and MMS), and phone calls. These communications may promote Company or projects listed on the Website. Please note that any communications, including phone calls, may be monitored and recorded for quality control purposes. You can opt-out of certain communications by submitting a relevant request.
- 16.2. In addition to the rights and privileges described in the terms, conditions, and policies outlined above, we further reserve the right to elect to electronically monitor areas of the Website and the Product and may disclose any content, records, or electronic communication of any kind if required to do so by any law, regulation, or government request, if such disclosure is necessary or appropriate to operate the Website, or to protect our rights or property, or the rights of the users, partners, affiliates, sponsors, providers, licensors, or merchants. If alerted to allegedly infringing, defamatory, damaging, illegal, or offensive content, we may investigate the allegation and determine in our sole discretion whether to remove or request the removal of such content from the Website.

- 16.3. We control the Website from our corporate offices within the United States of America, and the Website and the Service/Product is not intended to subject Company to any non-U.S. jurisdiction or law. By accessing and using the Website and Service/Product you agree that such access and use is subject to the terms, conditions, and policies of this Agreement as well as applicable laws. Our failure to insist upon strict performance of any provision of this Agreement shall not be construed as an implicit waiver of any provision or right.
- 16.4. If any part of this Agreement is ruled to be unenforceable, then such part shall be severed, with the remainder of the Agreement remaining in full force and effect. This Agreement constitutes the entire agreement between you and Company governing your use of the Website and the Service/Product.
- 16.5. Neither this Agreement, nor any content, materials or features of the Website and the Service/Product create any partnership, joint venture, employment, or other agency relationship between you and Company. You may not enter into any contract on behalf of Company or bind Company in any way.
- 16.6. You may not assign any of your rights under this Agreement, and any such attempt will be null and void. Company may, in its sole discretion, assign or transfer, without further consent or notification, this Agreement or any or all of the contractual rights and obligations pursuant to this Agreement, in whole or in part, to any affiliate of Company or to a third party in the event that some or all of the business of Company is transferred to such other third party by way of merger, sale of its assets or otherwise.
- 16.7. No failure or delay by Company to exercise any right or remedy set out in this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further Company's exercise of that or any other right or remedy.
- 16.8. We hereby notify you that parental control protections (such as computer hardware, software or filtering services) are commercially available that may assist you in limiting access to content that is harmful to minors.
- 16.9. If you have a question or complaint regarding the Website and Product, please contact us as follows (e-mail communications are not necessarily secure, so please do not include sensitive information in any e-mail to us):

**Mail:** PowerGranate LLC, 1602 Martinez Ln, BLDG 200, Wylie, TX 75098, U.S.

**Email:** [info@powergranate.co](mailto:info@powergranate.co)

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