1. PURCHASE ORDERS.

Purchase orders are in general non-cancelable except as expressly set forth herein, including any revised and follow-on orders, and will be governed by the terms of the Agreement. Purchase orders shall specify: (a) order number; (b) Seller’s product name or product number, as applicable, including a general description of the product; (c) product description and other exceptions to these Terms and Conditions (“Exceptions”) are set forth in Schedule A and B hereto. Unless otherwise noted in the Exceptions, each Exception shall be read together with the corresponding section of these Terms and Conditions. These Terms and Conditions (and if applicable any separate agreement between us and you that specifically reference these Terms and Conditions) (collectively, the “Agreement”) shall govern the relationship between the parties with respect to any purchase orders and sales of Products. The Agreement supersedes any prior representations or agreements, oral or written, and all other communications between the parties relating to the subject matter of the Agreement. The Agreement may not be executed by electronic means unless a party has authorized receipt of such offers and permits such execution and in such a case the Agreement shall be resolved by giving precedence in the following order: (i) the separate agreement between Seller and Buyer (if any); (ii) the Exceptions; and (iii) the Terms and Conditions. Before submission of a purchase order by the Buyer, prices, terms, conditions, and Product specifications are subject to change without notice.

2. PRICING.

The prices applicable to the Products shall be quoted by Seller. Buyer may rely on Seller’s quotation only if Buyer enters an purchase order within the period of time specified on the quotation or, if no duration is specified, within thirty (30) calendar days from the date of the quotation. After such time period, prices are subject to change without prior notice including those specified on any quotation, or part thereof, which has not resulted in an purchase order.

3. ORDER MODIFICATIONS.

Buyer may request add-ons or changes to quantities in a purchase order within twenty-four (24) hours of purchase order date. Buyer’s sole discretion to change the purchase order shall be in a shipping status or closed, and subject in fail to (i) Seller’s right to accept or reject such request in its sole discretion, and (ii) any price or schedule modification that may be required by the change request, as determined by Seller in its sole discretion.

4. DELIVERY/SHIPPING TERMS.

Unless otherwise agreed in writing and as is reasonably possible to do so, Seller shall be entitled to release partial shipments. If Seller makes a partial shipment, Seller shall bear all additional costs resulting from the partial shipment.

5. ACKNOWLEDGEMENTS.

Delivery dates, whether specified by Seller or Buyer, are, in principle, non-binding until confirmed in writing by Seller as binding. Seller will attempt to meet requested delivery dates. However, if Seller cannot meet Buyer’s delivery dates, Seller will notify Buyer via phone, fax, email, postal mail or order confirmation. If a binding delivery date has been agreed, the delivery shall be deemed timely if the Product is provided by Seller to the carrier on the agreed date. If Seller fails to meet the agreed delivery date, other than due to a Buyer failure to fulfill its obligations, Seller shall pay Buyer a penalty, as a result of “force majeure” (Verzugswirksam) by Seller is determined in accordance with the statutory provisions. In any case, the Buyer shall provide Seller with a reasonable cure period (Fristsetzung nach Mahnung) during which Seller can deliver the Product, unless extraordinary circumstances affecting Seller (such as impossibility of fulfilling its obligations) make such cure period dispensable or unapplicable.

6. INSPECTION AND ACCEPTANCE.

(a) Buyer will inspect the Products immediately after delivery by Seller (pursuant to Section 377 of the German Commercial Code (Handelsgesetzbuch – HGB)). Buyer must notify Seller in writing or via e-mail of any obvious defects within two (2) calendar days from receipt of the Product. When hidden defects (i.e. defects that do not become apparent during an inspection) appear, such hidden defects shall be notified in writing or via e-mail by Buyer to Seller within five (5) calendar days after discovery. The notice must include a description of the defects and evidence in the form of hard copies or other documents demonstrating the defects. Products will be presumed free from defects unless Seller receives written notice or a notification via e-mail of any recognizable defects explaining the defects within that period.

(b) Rejection shall be based solely upon the failure of the Products (i) to comply with Seller’s published specifications or such specifications which are mutually agreed to by the parties, or (ii) to be suitable for the intended use under the Agreement, or the customary use and quality which is usual in similar products and which a buyer may expect. Subject to applicable laws, Seller shall not be liable for any defect which does not significantly reduce or limit the value or usability of the Product (being minor or immaterial deviations from the agreed or assumed characteristics, or slight impairment of use), unless separately agreed in writing.

Furthermore, Seller will not warrant, guarantee or be held liable for achieving the Buyer's individual intended results of the suitability of the Product. If a Product's condition or a contractually required use has not been agreed, it is Buyer's sole responsibility to determine the suitability of the Products for use in Buyer's application(s).

7. PRODUCT CHANGES.

Seller may, without notice to Buyer, incorporate changes to Products that do not alter form, fit, or function (e.g. replacement of components with components of equal performance). Such changes shall only be reasonable and made for good cause, in particular due to technical progress or further product development. Seller may, at its sole discretion, also make such changes to Products previously delivered to Buyer.

8. CANCELLATIONS.

No purchase order may be canceled by Buyer without the prior express written consent of the Seller which consent shall be in Seller’s sole discretion and subject to payment of reasonable and proper termination charges made in accordance with the terms of the purchase order or any contractually agreed to price for the custom or specially manufactured products, or for non-cancelled, extended life-products after the Buyer receives order confirmation.

9. TERMS OF PAYMENT

Seller will invoice Buyer for Products sold to Buyer upon shipment. Partial shipments will be invoiced as they are shipped. Payment is due thirty (30) calendar days from receipt of invoice by Buyer. Payments must be made in Euro unless agreed otherwise in writing. If Buyer is delinquent in its payment obligation to Seller, Seller may withhold performance until all delinquent amounts under this Agreement, and interest that are due are paid. Additionally, Seller may, at its option: (a) withdraw (zurückziehen) from the Agreement according to statutory law and demand the return of the Products for which payment has not been made; (b) charge interest on delinquent amounts at the maximum rate permitted by law or as specified in Schedule A, for each full or partial month in which payment is overdue; (c) recover all costs of collection, including but not limited to reasonable attorneys’ fees, as claims for compensation (Schadensersatz) against Buyer; (d) withhold from Buyer any rebate payments which have been granted subject to the due payment by Buyer; (e) combine any of the above rights and remedies as permitted by applicable law; (f) suspend production, shipment, or delivery; modify or withdraw credit terms, including but not limited to requiring advance payment or guarantees, or other security; or(e) require that any or all such other rights and remedies available at law or in equity. This section will survive expiration or any termination of the Agreement. Seller may re-evaluate Buyer’s credit standing at all times. Buyer may only set off invoiced amounts which are owing by Buyer to Seller against Buyer’s counterclaims that have been legally ascertained, are uncontested or have been accepted by Seller.

It has been expressly agreed that, except in case of extension solicited at the latest ten (10) calendar days before the end of the agreement, all amounts remaining unpaid after their due date mentioned on the invoice may, at Seller’s sole discretion, give rise to:

- The application of a late payment penalty to Buyer, equal to 0.2% of the individual contract value (Abbrechungsverträge) for business of non-payment, not to exceed an aggregate of two percent (2%) of the individual contract value. This shall only apply for invoices remaining unpaid for a period of thirty (30) calendar days after their due date mentioned on the invoice and if Buyer is responsible for the delay in payment or;
- The application of a fixed sum for recovery costs as administrative expense of 4% (in words: forty Euro). Further claims for compensation (Schadensersatzansprüchen) of Seller remain unaffected by this, whereby such penalties paid by Buyer shall be credited against such claims for compensation.

10. TAXES.

Seller’s pricing excludes all taxes (including but not limited to value-added tax, and other similar taxes), duties (including import and export duties), and charges (collectively “Taxes”). Buyer will pay all Taxes resulting from the Agreement or Seller’s performance under the Agreement, whether imposed, levied, collected, withheld, or assessed now or later. If Seller is required to impose, levy, collect, withhold, or assess any Taxes on any transaction under the Agreement, then in addition to the purchase price, Seller will invoice Buyer for Taxes which have been charged to Buyer’s account. Additional Taxes, including but not limited to sales, use, and/or other similar Taxes, will be charged to Buyer for the purchase price of the Product. Buyer may request add-ons or changes to quantities in a purchase order within twenty-four (24) hours of purchase order date. Buyer’s sole discretion to change the purchase order shall be in a shipping status or closed, and subject in fail to (i) Seller’s right to accept or reject such request in its sole discretion, and (ii) any price or schedule modification that may be required by the change request, as determined by Seller in its sole discretion.

11. PACKING.

If Seller is responsible for packing any items for shipment, Seller will pack such items in accordance with Seller’s general packing instructions, suitable for airfreight.

12. BUYER CAUSED DELAY.

Seller’s compliance with any agreed delivery date (see Section 4) shall be subject to the timely and proper performance of Buyer. If Buyer fails to timely perform, Seller shall be released from any obligation to perform in accordance with the terms of the Agreement (Verzugswirksam) by Seller is determined in accordance with the statutory provisions. In any case, the Buyer shall provide Seller with a reasonable cure period (Fristsetzung nach Mahnung) during which Seller can deliver the Product, unless extraordinary circumstances affecting Seller (such as impossibility of fulfilling its obligations) make such cure period dispensable or unapplicable.

13. FORCE MAJEURE.

Except for payment obligations, neither party will be liable to the other for any failure to meet its obligations due to a “force majeure” event. Force majeure is an event unforeseeable and/or beyond the non-performing party’s control and includes, but is not limited to: (a) delays or refusal to grant an export license or the suspension or revocation thereof for which the non-performing party is not responsible, (b) embargoes, blockades, seizure or freeze of assets, or any other acts of any government that would limit a party’s ability to perform under this Agreement for which the non-performing party is not responsible, (c) fires, earthquakes, floods, storms, hurricanes, tornadoes, severe weather conditions, or any other acts of God, (d) quarantines or regional medical crises, (e) labor strikes or lockouts, and (f) riots, strife, insurrection, civil disobedience, landowner disturbances, armed conflict, terrorism or war, declared or not (or impending threat of any of the foregoing), if such threat might reasonably be expected to cause injury to people or property. This also applies to the occurrence of any force majeure affecting a supplier or sub-supplier of Seller. If a force majeure event causes a delay, then the date of performance will be extended by the period of time of occurrence of any Force Majeure, the non-performing party’s responsibility for delay, if any, does not continue to have effect during the occurrence of any Force Majeure.

14. MANUFACTURING HARDSHIP.
15. WITHDRAWAL/TERMINATION / SUSPENSION.
Either party may terminate this Agreement as far as set out in these Terms and Conditions and according to statutory provisions by giving written notice to the other party. In the event of a continuous obligation (Dauerschuldverhältnis), either party may terminate the Agreement with three (3) months’ notice or immediately for good cause. Good cause must be considered to exist in particular, in the case of any major breach under the conditions of the Agreement, if the breaching or defaulting party does not cure or cease to care any such breach or default within thirty (30) calendar days after receipt of written notice by the non-breaching or non-defaulting party. In the event of withdrawal (Kündigung) or other termination of the Agreement, Buyer shall immediately tender payment to Seller and deliver the Product and the Product as part of a contractual transaction. Direct costs of shipping, insurance, packaging and/or custom duties shall be borne initially by Buyer. If the Product is returned in case of withdrawal due to a defect (not being a minor defect, Section 6(b)), the costs of shipping, completed shipping insurance, packaging material and/or custom duties will be borne by Seller. Damage to the Product, which is attributable to improper packaging during the return of the Product, shall be borne by Buyer. Any previous damages and defects in the Product shall also be taken into account in assessing damages to be borne by Buyer. The rights of withdrawal are not exclusive of other remedies that a party may be entitled to under this Agreement or in law or equity.

16. COMPLIANCE WITH APPLICABLE LAW AND CODE OF BUSINESS CONDUCT.
Buyer understands that certain Products may include software to collect information about how, and under what conditions, the Product is used, and for what purposes, in order to fulfill the requirements of the product as specified in the contract. Buyer shall at its sole cost and expense, comply with all applicable laws, rules, regulations, decrees, and other requirements relating to or affecting the Agreement, the Products (including their safe, transfer, handling, storage, use, disposal, export, re-export, and transshipment), the activities to be performed by Buyer, or the facilities and other assets to be used by Buyer in the performance of its obligations under these terms and conditions. If Seller is responsible for the recycling and disposal of goods as required by WEEE Directive 2012/19/EU or similar directives. In addition, Buyer certifies it has read, understands, and agrees to abide by the provisions of the Honeywell Code of Business Conduct (the “Code of Conduct”), available at https://www.honeywell.com/who-we-are/integrity-and-compliance.

17. EXPORT AND IMPORT COMPLIANCE.
Buyer will comply with all applicable United States (US), United Nations (UN), European (EU), German and other international or national laws or regulations concerning (a) prohibition against commercial bribery or giving anything of value to any governmental official or candidate for political office in exchange for commercial advantage of any kind; (b) prohibition against exporting or facilitating the export, directly or indirectly, of goods which are subject by such applicable international or national sanctions; (iii) prohibition against complying with the boycott of certain countries covered by such applicable international or national boycott legislation; and (iv) transferring any technology, know how or specialized technical skills which might make foreign countries develop nuclear weapon capacity or chemical or biological weapons or missiles, nor use the Products or software in any facility which engages in activities relating to such weapons or missiles. In addition, the Products or software may not be used in connection with any activity involving nuclear fission or fusion, or any use or handling of any nuclear material, or any nuclear, chemical, or biological weapons. Buyer will at its sole cost and expense comply with export/import control laws. If and to the extent Buyer is liable and Seller has a claim to it, Buyer will indemnify, defend, and hold Seller harmless from any and all losses suffered by Seller as a direct result of Buyer’s or its customers’ non-compliance with export/import control laws. Further claims for compensation (Schadensersatzanspruch) of Seller remain unaffected by this. Buyer shall immediately inform Seller of any agreements with third parties which may, at any time during the performance of the Agreement, in any form and manner that the receiving party can show is: (a) publicly known at the time of disclosure or becomes publicly known through lawful channels of communication; (b) known to the receiving party at the time of disclosure through no fault of receiving party party, (c) received by receiving party from a third party without restrictions similar to those in this section, or (d) independently developed by receiving party. Each party shall retain ownership of its confidential information, including without limitation all rights in patents, copyrights, trademarks, and trade secrets. A receiving party of confidential information may not disclose such confidential information without the prior written consent of the disclosing party, provided that Seller may disclose confidential information to its affiliated companies, employees, officers, consultants, agents, and contractors.

19. DATA COLLECTION, TRANSMISSION AND USE.
Buyer understands that certain Products may include software to collect information about how, and under what conditions, the Product is used, and for what purposes, in order to fulfill the requirements of the product as specified in the contract. Buyer shall at its sole cost and expense, comply with all applicable laws, rules, regulations, decrees, and other requirements relating to or affecting the Agreement, the Products (including their safe, transfer, handling, storage, use, disposal, export, re-export, and transshipment), the activities to be performed by Buyer, or the facilities and other assets to be used by Buyer in the performance of its obligations under these terms and conditions. If Seller is responsible for the recycling and disposal of goods as required by WEEE Directive 2012/19/EU or similar directives. In addition, Buyer certifies it has read, understands, and agrees to abide by the provisions of the Honeywell Code of Business Conduct (the “Code of Conduct”), available at https://www.honeywell.com/who-we-are/integrity-and-compliance.

21. WARRANTY TERMS.
(a) Claims for defects (including but not limited to defects in the Product and the invoice; German: Mängelansprüche) shall become time-barred (1) years after (a) delivery of the defective Product or (b) when Seller has learned or should have learned of a defect of the Product or the invoice. The warranty provided herein is not exclusive of any warranty provided by the manufacturer of the Product. The warranty shall be determined in accordance with the warranty terms of the manufacturer of the Product. The manufacturer’s warranty shall not affect or reduce the warranty provided herein. (b) Warranty Claims. If, during the applicable Warranty Period for a Product sold by Seller hereunder, and in the event of a defect for which notification according to Section 6 has been timely provided, and which not only insignificantly reduces or limits the value or usability of the Product, such Product shall be returned to Seller. Upon receipt of any such Product within the applicable Warranty Period, Seller shall, at its expense, (i) inspect the Seller’s sole discretion, repair or replace such Product, and (ii) ship such Product as traditional delivery of the defective Product save for defects which are fraudulently concealed or caused by willful intent or gross negligence. Sections 478, 479 BGB remain unaffected.
(b) Warranty Claims. If, during the applicable Warranty Period for a Product sold by Seller hereunder, and in the event of a defect for which notification according to Section 6 has been timely provided, and which not only insignificantly reduces or limits the value or usability of the Product, such Product shall be returned to Seller. Upon receipt of any such Product within the applicable Warranty Period, Seller shall, at its expense, (i) inspect the Seller’s sole discretion, repair or replace such Product, and (ii) ship such Product as traditional delivery of the defective Product save for defects which are fraudulently concealed or caused by willful intent or gross negligence. Sections 478, 479 BGB remain unaffected.

Repair or replacement of a Product (or any part thereof) does not extend the Warranty Period for such Product. Products which have been repaired or replaced during the Warranty Period are warranted for the remainder of the unexpired portion of the Warranty Period.

Seller may refuse to remedy defects or deliver replacements, until Buyer has paid the full invoiced price of the ordered Product to Seller. Buyer shall be entitled to receive a reasonable amount which corresponds to the economic value of the defect on the Product.

c) Services Warranty. Services shall be performed in a good workmanlike manner consistent with industry practices. Seller’s obligation and Buyer’s sole remedy under this warranty is that Seller will correct or re-perform the service(s) within thirty (30) calendar days of the date the service was performed. All services corrected or re-performed are warranted for the remainder of the original warranty period. Subject to the limitations set forth in Section 24, below, Buyer shall not be entitled to damages arising out or in connection with any services performed outside of Seller’s right to discontinue services, interruption of service, performance of any price reduction in the event that the defect is not remedied by Seller because of means of correction or re-performance shall remain unaffected.

d) OTHER LIMITATIONS. THE EXPRESS WARRANTIES OF SELLER STATED IN SECTION 21 DO NOT APPLY TO PRODUCTS NOT SOLD BY SELLER. IN ADDITION, THE EXPRESS WARRANTIES OF SELLER STATED IN SECTION 21 DO NOT APPLY TO ANY SOFTWARE COMPONENT WHICH IS NOT SOLD OR LICENSED SUBJECT TO A SEPARATE LICENSE AGREEMENT OR OTHER DOCUMENT RELATING TO SUCH SOFTWARE COMPONENT (INCLUDING WITHOUT LIMITATION A “SHRINK WRAP” LICENSE AGREEMENT). THE WARRANTIES, IF ANY, APPLICABLE TO ANY SUCH SOFTWARE COMPONENT SHALL BE SOLELY AS STATED IN SUCH OTHER LICENSE AGREEMENT OR DOCUMENT. SELLER MAKES NO WARRANTIES THAT THE SOFTWARE COMPONENTS OF ANY PRODUCT WILL OPERATE IN CONJUNCTION WITH ANY OTHER SOFTWARE OR WITH ANY EQUIPMENT OTHER THAN THE PRODUCTS.

e) DISCLAIMER. THE EXPRESS WARRANTIES OF SELLER STATED IN SECTION 21 AND AGREEMENT ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE. NO EXTENSION OF THIS WARRANTY WILL BE BINDING UPON SELLER UNLESS SET FORTH IN WRITING AND SIGNED BY A SELLER AUTHORIZED REPRESENTATIVE.

(f) Miscellaneous Provisions. Without limitation of the foregoing, the following additional provisions apply to this limited warranty.

1) In order for this limited warranty to be effective, notwithstanding Section 6, you must notify us as within twenty (20) calendar days from the date of delivery of the Product. Period of delivery of the Product to us, properly packaged, and with insurance and transportation costs prepaid. Unless otherwise set forth in the applicable Product warranty, prior to return shipment, contact Honeywell Customer Service to obtain a return goods authorization (RGA) or Returned Materials Authorization (RMA) number. Return shall be accompanied by a statement of the reason for return, in good working order and in the original packaging. The return of the Product must be insured and shipped freight prepaid by Buyer. Buyer shall be responsible for all costs incurred in the return of Products. SELLER WILL HAVE NO LIABILITY FOR LOSS OR DAMAGE TO PROPERTY IN TRANSIT.

2) Seller will recondition the Product to you at our expense, if applicable. Buyer, acting on its own behalf and at its own risk, may return the Product to Seller for inspection, evaluation, and determination as to whether the Product is a defect under the warranty, or whether the defect is caused by normal wear and tear. Buyer is responsible for providing and maintaining a standard of care and appropriate security measures. Buyer is responsible for all such damages. Where Buyer is not the end-user of the Product, Buyer represents and warrants that it will require its customers to comply with the above Cybersecurity Event provisions.

22. INDEMNIFICATION AGAINST PATENT AND COPYRIGHT INFRINGEMENT; THIRD PARTY CLAIMS

Seller will defend any suit against Buyer based on a claim that the Product as delivered by Seller directly infringes a valid patent or copyright, and indemnify for any final judgment assessed against Buyer resulting from the suit provided that Buyer notifies Seller at the time it is apprised of the third-party claim, promptly provides any and all additional information and assistance in connection with the suit to Seller, and agrees to give sole and complete authority, information, and assistance (at Seller’s expense) for the defense and disposition of the claim using counsel of Seller’s choice. Seller will not be responsible for any compromise or settlement made without Seller’s consent. Buyer may settle at its own expense any suit which does not infringe any patent or copyright.

23. INDEMNIFICATION

If and to the extent Buyer is liable and Seller has a claim to it, Buyer agrees to indemnify and defend Seller to the same extent and subject to the same restrictions as set forth above in Seller’s obligations to Buyer for any suit against Seller based upon a claim of infringement resulting from Section 21.

If a claim of infringement is made or if Seller believes that such a claim is likely, Seller may, at its option, and at no cost or expense to Buyer, procure for the Buyer the right to use the Product. If Seller so pronounces, Seller will either modify the Product so that it does not infringe, or accept return of the Product and terminate Buyer’s license to use the Product and grant Buyer a credit for the purchase price or license fee paid for the Product, less a reasonable depreciation for use, wear, and obsolescence. Further, Seller may cause all shipping Products it believes may be subject to a claim of infringement without being in breach of the Agreement.

THIS PROVISION STATES THE PARTIES’ ENTIRE LIABILITY, SOLE RECOUPMENT, AND THEIR ENTIRE REMEDY FOR ANY CLAIM OF INFRINGEMENT OF ANY THIRD PARTY INTELLECTUAL PROPERTY RIGHTS. ALL OTHER LIABILITIES AGAINST INFRINGEMENT OF ANY THIRD PARTY INTELLECTUAL PROPERTY RIGHTS, STATUTORY, EXPRESS, IMPLIED, OR OTHER, ARE HEREBY DISCLAIMED.

24. LIMITATION OF LIABILITY; LIMITATION ON ACTIONS

Notwithstanding anything to the contrary contained in this Agreement: (i) In connection with this Agreement and the sale of Products (including the delivery of Products) and provisions of services to Buyer, regardless of the form of action giving rise to such liability, and including any liability under Sections 6, 21 and 22 above, Seller shall only be liable for damages that have caused by gross negligence and/or willful misconduct. (ii) In the case of violation of the essential duties described in the Agreement (wesentliche Vertragspflichten; fundamental obligations), Seller shall also be liable for all other forms of liability whereby this is limited to the contractual, typical damage to the amount of an average damage customary in the relevant industry, which would have been reasonably foreseeable on the date the Agreement is concluded or on the date when the breach of duty was committed. Such reasonable amount depends on the concrete case, but regularly is the aggregate purchase price for the Products or services in question. Essential obligations are those whose fulfillment is essential for the proper execution of the Agreement by Seller (i.e. primary contractual obligations) and on whose compliance Buyer can regularly rely and trust. (iii) Seller shall be liable for losses arising from the lack of any characteristics of the Product which is specified in writing, and if the failure covered by the warranty would have been avoided by the proper execution of the guarantee and which was foreseeable for Seller at the time the guarantee was given. (iv) Seller shall not be liable for damages resulting from improper handling or improper use of the delivered Products. (v) Claims for damages under the German Product Liability Act (Produkthaftungsgesetz) and all other applicable national and international laws as well as claims for the future of such provision or right, and no waiver of any provision or right shall affect the limitation of liability. (vi) Seller is responsible for fault on the part of its (third party) suppliers and sub-suppliers to the same extent as for fault on his own part (subject to the limitation set forth under this Section 24), including providing reasonable assistance with respect to product recall or other warranty actions by Seller, subject to the terms and conditions set forth in writing and signed by a Seller authorized representative.

25. NOTICES.

If not otherwise agreed herein, every notice between the parties relating to the performance or administration of the Agreement shall be made in writing and, if to Buyer, to Buyer’s authorized representative or, if to Seller, to Seller’s authorized representative at the addresses set forth in this Agreement between the parties to which these Terms and Conditions apply. All notices required under the Agreement will be deemedGiven with West reference to the date of delivery to or receipt of the other party, and shall be evidenced by written verification of receipt from the receiving party. Notices may be made via e-mail if expressly allowed in the provisions of this Agreement.

26. SEVERABILITY.

If and to the extent Buyer is liable and Seller has a claim to it, Buyer agrees to indemnify and defend Seller to the same extent and subject to the same restrictions as set forth above in Seller’s obligations to Buyer for any suit against Seller based upon a claim of infringement resulting from Section 21.

If a claim of infringement is made or if Seller believes that such a claim is likely, Seller may, at its option, and at no cost or expense to Buyer, procure for the Buyer the right to use the Product. If Seller so pronounces, Seller will either modify the Product so that it does not infringe, or accept return of the Product and terminate Buyer’s license to use the Product and grant Buyer a credit for the purchase price or license fee paid for the Product, less a reasonable depreciation for use, wear, and obsolescence. Further, Seller may cause all shipping Products it believes may be subject to a claim of infringement without being in breach of the Agreement.

THIS PROVISION STATES THE PARTIES’ ENTIRE LIABILITY, SOLE RECOUPMENT, AND THEIR ENTIRE REMEDY FOR ANY CLAIM OF INFRINGEMENT OF ANY THIRD PARTY INTELLECTUAL PROPERTY RIGHTS. ALL OTHER LIABILITIES AGAINST INFRINGEMENT OF ANY THIRD PARTY INTELLECTUAL PROPERTY RIGHTS, STATUTORY, EXPRESS, IMPLIED, OR OTHER, ARE HEREBY DISCLAIMED.

27. WAIVER.

All waivers must be in writing. The failure of either party to insist upon strict performance of any part of the Agreement, or to exercise any right provided for herein, shall not be deemed to be a waiver for the future of such provision or right, and no waiver of any provision or right shall affect the right of the waiving party to enforce any provision or right hereof.

28. APPLICABLE LAW AND FORUM.

The Agreement shall be governed by and interpreted in accordance with the laws of Germany. Seller and Buyer expressly agree to exclude from the Agreement the United Nations Convention on Contracts for the International Sale of Goods, 1980. Any potential dispute relating to the Agreement will fall under the exclusive jurisdiction of the courts of Germany.

29. DISPUTE RESOLUTION (EXECUTIVE ESCALATION).

Before the parties initiate any dispute resolution process other than injunctive relief, the parties must schedule a mandatory executive resolution conference to be held within thirty (30) calendar days of receipt of the other party’s written request. The conference must be attended by at least one executive from each party. At the conference, each party will be given the opportunity to present its views of the dispute in a face-to-face meeting with an attempt to resolve the dispute. If the dispute is not resolved within fifteen (15) calendar days of the end of the conference, either party may pursue resolution of the dispute consistent with the other terms of the Agreement.

30. PUBLICITY.

The parties will cooperate in preparing press releases and white papers as they deem appropriate regarding the subject matter of the Agreement. Any such press release or white paper will be subject to the parties’ mutual written approval, which approval will not be unreasonably withheld.

31. INDEPENDENT CONTRACTOR.

The parties acknowledge that they are independent contractors and nothing contained in this Agreement shall be construed to constitute either party hereto as the partner, joint venture, or agent of the other. Neither party has the right to bind or obligate the other, except as otherwise provided herein. Furthermore, nothing contained in this Agreement shall be construed to constitute Buyer as an exclusive purchaser of the Products in any respect.
32. HEADINGS AND SECTIONS. The various headings in this Agreement are inserted for convenience only and will not affect the meaning or interpretation of this Agreement or any paragraph or section thereof.

33. INSURANCE. Unless agreed otherwise, Buyer shall, at all times that the Agreement is in force and effect, provide and maintain, at a minimum, insurance with the following limits: (i) A Comprehensive General Liability policy with a single limit of EUR 1,000,000 per occurrence and EUR 2,000,000 in the aggregate for bodily injury and property damages; Buyer shall deliver certificates to Seller, containing therein provisions requiring the insurance carrier to notify Seller at least thirty (30) calendar days prior to any expiration or termination of, or material change to the policy. All certificates shall be delivered to the Seller prior to placement of any orders hereunder.

34. ASSIGNMENT; SUBCONTRACTING. Neither party will assign any rights or obligations under the Agreement without the advance written consent of the other party, which consent will not be unreasonably withheld, conditioned, or delayed, except that either party may assign this Agreement in connection with the sale or transfer of all or substantially all of the assets of the product line or business to which it pertains. Any attempt to assign or delegate in violation of this section will be void, except that Seller may assign this Agreement to any subsidiary or affiliate. Notwithstanding anything to the contrary herein, Seller may engage subcontractors to perform any of its obligations under this Agreement. Use of a subcontractor will not release Seller from liability under the Agreement for performance of the subcontracted obligations.

35. SURVIVAL. Sections 9, 10, 16 to 35 by their nature should continue in force after the completion or termination of the Agreement will remain in force.