These terms and conditions of sale (“Terms and Conditions”) are effective January 1, 2017 and supersede all previous publications covering (“Honeywell”, “Seller”, “we”, “us”, or “our” herein, and shall differ based upon the entity to which you have issued your purchase order (“Buyer”) products or services (hereinafter referred to as “Products”). Therefore, except in a writing signed by an authorized representative of Seller, no modification to these Terms and Conditions (and if applicable any separate agreement between us and you that specifically reference these Terms and Conditions) (collectively, the “Agreement”) contain the entire agreement between the parties with respect to the subject matter of the Agreement and 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 is non-transferable. Except in a writing signed by an authorized representative of Seller which consent shall be in Seller’s sole discretion and subject to payment of reasonable and proper termination charges as determined by Seller from time to time. Seller does not accept cancellations for custom or specially manufactured products, or for non-stocked, extended lead-time products after the Buyer receives order confirmation.

1. PURCHASE ORDERS.

Purchase orders are 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) the Agreement; (b) order number; (c) Seller’s Product part number or quotation number, as applicable, including a general description of the Product; (d) requested delivery dates; (e) applicable price; (f) quantity; (g) location to which the Product is to be shipped; and (h) location to which invoice is to be sent for payment. Purchase orders are subject to acceptance or rejection by Seller. No purchase order is accepted by Seller unless Seller has issued a written order confirmation.

Seller’s sale of Products is expressly limited to the terms herein. Any conflicting, additional, and/or inconsistent terms or conditions on Buyer’s purchase order or any other instrument, agreement, or understanding are deemed to be material alterations and are rejected and not binding upon Seller. Seller’s acceptance of Buyer’s purchase order is expressly conditioned upon Buyer’s consent to the terms and conditions contained herein in their entirety. Buyer’s acceptance of delivery from Seller constitutes Buyer’s acceptance of these Terms and Conditions in their entirety.

2. PRICING.

Unless stated otherwise in the Seller’s order confirmation, prices are CIP (Incoterms 2010). Prices are exclusive of any applicable value added tax for which the Buyer is additionally liable.

3. ORDER MODIFICATIONS.

Buyer may request address or changes to quantities in an order within 24 hours of order placement (or later in Seller’s sole discretion), provided that the order is open and not in a shipping status or closed, and subject in full to (i) Seller’s right to accept or reject such request in its sole discretion, and (ii) Buyer will not be liable for any delays or increased costs incurred by Seller caused by or related to Buyer’s acts or omissions. Title to goods passes to Buyer upon full payment.

4. DELIVERY/SHIPPING TERMS.

Delivery dates are estimates. Delivery terms for Products are CIP (Incoterms 2010). Risk of loss or damage to goods passes to Buyer when Products are delivered to first carrier. Within 30 days of delivery, any claim for shortage must be reported in writing to Seller; otherwise, all goods will be deemed delivered and accepted and Seller will be liable for any delays or increased costs incurred by Buyer caused by or related to Buyer’s acts or omissions. Title to goods passes to Buyer upon full payment. Seller will deliver (and use commercially reasonable efforts to ship) in accordance with its standard lead time unless Buyer’s order requests a later delivery date, or Seller agrees in writing to an earlier delivery date. Seller reserves the right to ship orders earlier than scheduled delivery dates. All shipments will be processed using the same method and carrier identified in the order confirmation.

5. ACKNOWLEDGMENTS.

Seller will attempt to meet requested delivery dates. However, if Seller cannot meet Buyer’s delivery date, Seller will notify Buyer via fax, email, postal mail or order confirmation.

6. INSPECTION AND ACCEPTANCE.

Buyer will inspect Products and notify Seller of any lack of conformity of the Products within a reasonable period after delivery not to exceed thirty (30) calendar days. Products will be presumed accepted unless Seller receives written notice of rejection explaining the basis for rejection within that period. Rejection shall be based solely upon the failure of the Products to comply with Seller’s published specifications or such specifications which are mutually agreed to by the parties. Seller has a reasonable opportunity to repair or replace rejected Products, at its option. Seller will cover shipping costs for the return of properly rejected Products in an amount not to exceed normal surface shipping charges to Seller’s designated facility for the return of such Products. Following initial delivery, the party initiating shipment will bear the risk of loss or damage to Products in transit. If Seller reasonably determines that rejection was improper, Buyer will be responsible for all expenses caused by the improper rejection.

7. PRODUCT CHANGES.

Seller may, without notice to Buyer, incorporate changes to Products that do not alter form, fit, or function, and 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 as determined by Seller from time to time. Seller does not accept cancellations for custom or specially manufactured products, or for non-stocked, extended lead-time 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 separately and payments are due within thirty (30) days of invoice date. Payment is due thirty (30) calendar days from date of invoice. Payments must be made in the currency set out in Honeywell’s order confirmation unless agreed otherwise in writing. If Buyer is delinquent in its payment obligation to Seller, Seller may withhold performance until all delinquent amounts and interest that is due are paid. Additionally, Seller may, at its option: (a) repossess Products for which payment has not been made; (b) charge interest on delinquent amounts at the maximum rate permitted by law, for each full or partial month in which payment is overdue; (c) recover all costs of collection, including court costs, collection fees, and all reasonable attorney’s fees; (d) in the event Seller elects to withhold any payment or make any payment required to be made under the Agreement when due and fails to remedy the breach within 3 calendar days after receipt of written notice of non-payment; (e) Buyer attempts to assign this Agreement or any rights hereunder without Seller’s prior written consent; (f) Buyer ceases to function as a going concern, suspends or ceases to conduct its operations in the normal course of business (including the inability to meet its obligations as the result of a bankruptcy, reorganization, or dissolution); and (g) Buyer is insolvent.

10. TAXES.

Seller’s pricing excludes all taxes (including but not limited to sales, use, excise, value-added, and other similar taxes), import 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, unless at the time of order placement, Buyer furnishes Seller with a valid exemption certificate or other documentation sufficient to verify exemption from the Taxes, including, but not limited to, certificates of non-U.S. government, government-owned, trade association, research and development, nonprofit organization, and for any other benefits. These remedies are in addition to all other remedies available at law or in equity. This section will survive expiration or any termination of the Agreement. Seller may evaluate Buyer’s credit standing at all times. Buyer may not set off any invoiced amount against another invoice, assertion of a counterclaim, or any other claim whatsoever.

It has been expressly agreed that, except in case of extension solicited at the latest 10 days before the due date and expressly granted by Seller, invoices remaining unpaid after their due date may be subject to reasonable and proper termination charges as determined by Seller. The application of any of such charges is not intended to be an admission of any of the above rights and remedies as may be permitted by applicable law; (f) suspend production, shipment, or delivery; modify or withdraw credit terms, including but not limited to various advance payment or guarantees, or other security; or terminate any program or other benefits. These remedies are in addition to all other remedies available at law or in equity. This section will survive expiration or any termination of the Agreement. Seller may evaluate Buyer’s credit standing at all times. Buyer may not set off any invoiced amount against another invoice, assertion of a counterclaim, or any other claim whatsoever.

In the event the parties are not able to agree on a revised Product price within ten (10) days after a request for renegotiation is given, then Seller may terminate this Agreement on ten (10) days written notice to Buyer.

12. BUYER CAUSED DELAY.

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 beyond the non-performing party’s reasonable control and may include but is not limited to: (a) delays or refusal to grant an export license or the suspension or revocation thereof, (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, (c) acts of nature, including, but not limited to, hurricanes, tornados, severe weather conditions, or any other acts of God, (d) quarantines or regional medical crises, (e) shortages or inability to obtain materials or components, (f) labor strikes or lockouts, (g) riots, strife, insurrection, civil disobedience, landowner disturbances, armed conflict or 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, and (h) inability or refusal by Buyer’s directed third party to provide Seller parts, services, manuals, or other information necessary to the goods or services to be provided by Seller under the Agreement. If a force majeure event causes a delay, then the date of performance will be extended by the period of time that the non-performing party is actually delayed or for any other period as the parties may agree in writing.

14. MANUFACTURING HARDSHIP.

If for any reason Seller’s production or purchase costs for the Product (including without limitation costs of energy, labor, equipment, delivery, transportation, raw material, feeds, or Product) increases by more than five 5% over Seller’s production or purchase costs for the Product on the date of entering into this Agreement, then Seller may, by written notice to Buyer, request a renegotiation of the price of the Product under this Agreement. In the event the parties are not able to agree on a revised Product price within ten (10) days after a request for renegotiation is given, then Seller may terminate this Agreement on ten (10) days written notice to Buyer.

15. TERMINATION / SUSPENSION / WITHDRAWAL.

Seller, at its sole discretion, may at any time withdraw from this Agreement and any or all unperformed orders immediately upon notice delivered to Buyer not later than 2 weeks from the occurrence of any of the following events: (i) Buyer fails to perform or breach any of its obligations and covenants under this Agreement, and such default continues for more than thirty (30) days after receipt of written notice from Seller; (ii) Seller elects to terminate the Agreement; (iii) Buyer fails to make any payment required to be made under this Agreement when due, and fails to remedy the breach within 3 calendar days after receipt of written notice of non-payment; (iv) Buyer attempts to assign this Agreement or any rights hereunder without Seller’s prior written consent; (v) Buyer ceases to function as a going concern, suspends or ceases to conduct its operations in the normal course of business (including the inability to meet its obligations as the result of a bankruptcy, reorganization, or dissolution); (vi) Buyer is insolvent; (vii) there is a transfer of substantially all of the assets of, or a majority interest in the voting stock of, Buyer, or the merger or consolidation of Buyer with one or more parties; (viii) dissolution of Buyer or death of any principal owner of Buyer (viii).
any officer, principal, stockholder, member, or partner of Buyer is indicted for or convicted for any felony or converts or embezzles any property or funds of others; (viii) any conduct or practice by Buyer occurs which is detrimental or harmful to the good name, goodwill, and reputation of Seller or the Products; or (ix) if the Buyer is a distributor or other reseller, the Buyer sells, offers, or resells any Product in violation of the terms of this Agreement authorizing Buyer to act as distributor or other reseller; or (x) any breach of section 16 of this Agreement. Termination does not affect any claim, debt, or cause of action accruing to any party prior to the date of termination. Any breaches of termination clause are not exclusive of other remedies that a party may be entitled to under this Agreement or in law or equity.

Seller may suspend performance under this Agreement at Buyer's expense if Seller determines that performance may cause a safety, security, or health risk.

16. COMPLIANCE WITH APPLICABLE LAW AND CODE OF BUSINESS CONDUCT

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 sale, transfer, handling, storage, use, disposal, export, re-export, and transshipment), the activities performed by the Seller, the Buyer, or the facilitators on behalf of Seller in connection with performing its obligations under the Agreement. Without limiting the foregoing, Buyer is responsible for the recycling and disposal of goods as required by WEEE Directive 2012/19/EU or similar laws. Buyer agrees that it will not use the Products in connection with any activity involving nuclear fission or fusion, any use or handling of any nuclear material, or any nuclear, chemical, or biological weapons. 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 at all times with all United States (US), United Nations (UN) and other international or national laws or regulations concerning (i) prohibition against commercial bribery or giving anything of value to any governmental official or candidate for political office in exchange for anything of value; (ii) the facilitation of bribe payments or kickbacks; (iii) the export or import of items to countries covered by economic sanctions; and (iv) transferring any technology, know how or specialized technical information to countries where the transfer is regulated by licensing laws and permitting requirements with respect to any item involving nuclear fission or fusion, any use or handling of any nuclear material, or any chemical, biological or weapons. In addition, Buyer certifies it 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.

18. ANTI-CORRUPTION LAWS

Buyer acknowledges and agrees that it will comply with the United States Foreign Corrupt Practices Act (as amended, the “FCPA”) and all other applicable anti-bribery and anti-corruption legislation (“Anti-Corruption Law”). Without limiting the foregoing, Buyer hereby certifies: (a) That it will not, for the purposes of securing an unfair business advantage, directly or indirectly, offer, pay, give, promise to pay or give, or authorize the payment or giving of any money, gift, or anything of value to: (i) any “Restricted Person” defined as: (A) any officer, employee, or person acting in an official capacity for any government, any government department, agency, or instrumentality, any government or state enterprise, or any international organization or government or public international organization, or any government official or party official; (B) any candidate for public office; (C) any candidate, director, officer, or shareholder, if shareholding includes more than ten percent (10%) of the issued shares, employee, or agent of any private customer; or (ii) any person that has any reason to know or have reason to believe any portion of such thing of value will be offered, given, or promised, directly or indirectly, to any Restricted Person. (b) That neither the Buyer nor any of its shareholders, directors, officers, employees, or agents has performed any act which would constitute a violation of, or which would cause Seller to be in violation of, the FCPA or other Anti-Corruption Law. (c) That it will maintain accurately such books and records as Seller may reasonably require to support its compliance with the FCPA and other Anti-Corruption Law and with the import and export control laws and regulations applicable by virtue of the Agreement. Buyer will be advised of such audit not less than thirty (30) days in advance. Buyer shall prepare for and assist in any such audit. (d) That, in the event, after execution of this Agreement, Buyer becomes, or proposes to become a Restricted Person, Buyer shall immediately notify Seller, and Seller shall have the unilateral right, without prejudice to either party's rights, to cease dealing with arepair facility, an implementation of Buyer’s compliance with the FCPA and other Anti-Corruption Law and with the import and export control laws and regulations applicable by virtue of the Agreement. Buyer will be advised of such audit not less than thirty (30) days in advance. Buyer shall prepare for and assist in any such audit.
(a) Warranty Claims. If, during the applicable Warranty Period for a Product sold by Seller hereunder, it is determined that any component of such Product, except software components, is defective due to faulty workmanship or defective materials, then such Product shall be returned to Seller, it being agreed that Seller shall not bear the expense of shipping such Product to Seller, except as otherwise agreed. Upon Seller’s receipt of such Product, Seller shall inspect said Product and, if an error is immediately noticed during such inspection, Seller shall, at its option, (1) correct any such error, (2) replace such Product with a new Product of like kind and quality, or (3) refund to Buyer the purchase price of such Product. Except as otherwise agreed, Seller shall inspect any Product returned by Buyer and, if reasonable and necessary, shall test the same. If, upon Seller’s investigation of such Product, it is determined that such Product is not defective, Buyer shall pay to Seller’s order an amount equal to the cost of performing such investigation and testing, plus any additional costs incurred by Seller in connection with such investigation and testing.

(b) Servicing. Servicing of Products shall be performed in a good workmanlike manner consistent with industry practices and are warranted for ninety (90) days from the date services are performed. Seller’s obligation and Buyer’s sole remedy under this warranty is that Seller will correct any errors in servicing or replace any faulty or defective part(s) in Servicing within the warranty period. Buyer must notify Seller in writing of defective Servicing within the warranty period. All services attempted or performed are warranted for the remainder of the original warranty period. Unless otherwise specified in the Agreement, software is provided on an “as-is” basis.

(c) OTHER LIMITATIONS. THE EXPRESS WARRANTIES OF SELLER STATED IN SECTION 21 DO NOT APPLY TO PRODUCTS NOT MANUFACTURED BY SELLER, SOFTWARE COMPONENTS OF ANY PRODUCT, SOFTWARE COMPONENTS OF A PRODUCT WHICH IS 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 SUCH SOFTWARE COMPONENTS ARE 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.

(d) DISCLAIMER. THE EXPRESS WARRANTIES OF SELLER STATED IN SECTION 21 ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS. THE EXPRESS OBLIGATION OF SELLER STATED IN SECTION 21 (B) ABOVE IS IN LIEU OF ANY OTHER LIABILITY OR OBLIGATION OF SELLER, INCLUDING WITHOUT LIMITATION ANY LIABILITY OR OBLIGATION FOR ANY DAMAGE, LOSS, OR INJURY (WHETHER DIRECT, INDIRECT, EXEMPLARY, SPECIAL, CONSEQUENTIAL, OR INCIDENTAL) ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OR NONPERFORMANCE OF THE AGREEMENT OR ANY PRODUCT OR PART THEREOF (EXCEPT FOR REPAIR OR REPLACEMENT (AT SELLER’S OPTION) IS THE SOLE REMEDY FOR ANY SUCH DAMAGE, LOSS. NO EXTENSION OF THIS WARRANTY WILL BE BOUND UPON BUYER IN WRITING FOR FORTHRIGHT PROMOTION AND SIGNS AUTHORIZED REPRESENTATIVE., WITH THE RESERVATION OF LIABILITY FOR DAMAGES CAUSED BY A HAZARDOUS PRODUCT.

(e) 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, you must notify us within 20 days of discovery of a defect. You must return the defective Product to us within the Warranty Period, properly packaged, and with insurance and transportation costs prepaid. Seller will inspect returned goods within 30 days or the claim will be cancelled. To maintain this limited warranty, the Buyer must perform maintenance and inspections prescribed in the User’s Instructions which shall include prompt replacement or repair of defective parts, and the replacement of parts of the maintenanced in the User’s Instructions. Unless otherwise agreed by Seller, Buyer will return the applicable Product to Seller, return shipment, contact Honeywell Customer Service to obtain a return goods authorization (RGA) or Returned Materials Authorization (RMA) number, and ship the returned Product to Seller in accordance with any shipping instructions marked with the RGA/RMA number on the shipping container(s). No Product returns will be accepted by Honeywell without a valid Honeywell reference number. All Products must be cleaned and decontaminated prior to return shipment.

(2) Honeywell will replace any product to you at its expense in the United States. If applicable, Buyer, acting on its own behalf only, shall extend a warranty to its customers no broader in scope than the limited warranty extended to it by Seller. Buyer shall perform and fulfill at its sole expense all obligations hereunder, for the benefit of and at Buyer’s own risk and expense (except as otherwise agreed by Seller). Buyer shall not be liable to Seller for any warranty claims made by its customers, except as otherwise agreed by Seller.

(3) Seller will not be liable under this limited warranty if the Product has been exposed or subjected to: (a) maintenance, repair, installation, servicing, handling, packaging, transportation, storage, operation, or use which is improper or otherwise not in compliance with Seller’s instructions; (b) accident, alteration, modification, contamination, foreign object damage, exposure to corrosive environments, misuse, negligence, or negligence after shipment to Buyer; (c) damage caused by failure of any Seller-supplied Products not under warranty or by any hardware or software not supplied by Seller; (d) use of counterfeit or replacement parts, components, or software, other than those authorized by Seller; or (e) Product which is normally consumed in operation or which has a normal life inherently shorter than the foregoing warranty period, including, but not limited to, consumables (e.g., flashlights, lamps, batteries, storage capacitors). This limited warranty does not cover any defects or damage caused by any warranty claims or actions. SECTION 25 WILL NOT APPLY TO ANY DEFECTS OR DAMAGES CAUSED BY ANY NONCONFORMITY WHICH RESULTS IN A BREACH OF CONTRACT, INDEMNITY, WARRANTY, TORT (INCLUDING BUT NOT LIMITED TO NEGLIGENCE), OPERATION OF LAW, OR OTHERWISE, WITH THE RESERVATION OF ANY RIGHTS OF DEFENSE OR LIMITATION OF DAMAGES ARISING UNDER A LEGAL OR EQUITABLE ACTION MORE THAN ONE YEAR AFTER THE FIRST EVENT GIVING RISE TO A CAUSE OF ACTION, UNLESS A SHORTER PERIOD IS PROVIDED BY APPLICABLE LAW.

(f) For reasons other than a “force majeure” event, Buyer should default or delay in make delivery goods, Buyer’s sole remedy against Honeywell is an option to cancel Buyer’s purchase order, through prior written notice to Honeywell.

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22. TECHNICAL ADVICE.

Any recommendation or assistance provided by Seller concerning the use, design, application, or testing of the Goods is not a guarantee of results or performance of the Goods. The Goods does not impart any title or interest in or to the Goods. Seller shall not be responsible for any infringement or non-infringement of any patent, trademark, copyright, or other intellectual property right arising out of or in connection with the use, design, application, or testing of the Goods. Seller shall not be liable for damages caused by a Cybersecurity Event resulting from Buyer’s failure to comply with the Agreement or Buyer’s failure to maintain reasonable and appropriate security measures. Buyer is solely responsible for such damages. If Buyer is the end-user of the Product, Buyer represents and warrants that it will require its customers to comply with the above Cybersecurity Event provisions.

23. INDEMNIFICATION AGAINST PATENT AND COPYRIGHT INFRINGEMENT.

Seller will defend any suit against the Buyer based on a claim that the Product as delivered by Seller directly infringes a valid United States or European 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 materials related to the claim it receives 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. Buyer will not be responsible for any compromise or settlement made without Seller’s consent. Because Seller has exclusive control of resolving claims under this provision, in no event will Seller be liable for any defense fees or costs incurred by Buyer. Seller shall settle any suit or proceeding arising out of or in connection with the claim on its own terms and subject to Buyer’s written consent, and Seller shall not be liable for any damages, fees, or costs incurred by Buyer for any settlement without Seller’s prior, written consent thereto.

24. INDEMNIFICATION.

Buyer shall indemnify Seller for all costs and damages, including attorneys’ fees, suffered by Seller as a result of Buyer’s actual or threatened breach of these terms and conditions.

25. LIMITATION OF LIABILITY: LIMITATION ON ACTIONS.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THE AGREEMENT: (A) SELLER’S AGGREGATE LIABILITY IN CONNECTION WITH THE AGREEMENT (INCLUDING ALL PROCEEDS THEREOF) AND PRODUCTS, SERVICES, AND/ OR INFORMATION SOLD OR PROVIDED TO BUYER, REGARDLESS OF THE FORM OF ACTION GIVING RISE TO SUCH LIABILITY, AND INCLUDING ANY LIABILITY UNDER THE INDEMNIFICATION PROVISIONS OF THE AGREEMENT (SECTIONS 23 AND 24 OF THESE TERMS AND CONDITIONS), SHALL NOT EXCEED THE AGGREGATE PURCHASE PRICE FOR THE PRODUCTS IN QUESTION PAID BY BUYER TO SELLER UNDER THE AGREEMENT; (B) SELLER SHALL NOT BE LIABLE FOR ANY EXEMPLARY, INCIDENTAL, CONSEQUENTIAL, STATUTORY, PUNITIVE, SPECIAL, OR INDIRECT DAMAGES OF ANY KIND, OR ANY LOSS ARISING FROM BUSINESS INTERRUPTION, LOST PROFITS, LOST REVENUES, LOSS OR CORRUPTION OF DATA, OR LOSS OF USE, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE, LOSS, OR INJURY. EXCEPT AS OTHERWISE PROVIDED, THE PARTIES EXPRESSLY AGREE THAT THE PRODUCTS ARE NOT CONSIDERED TO BE GOOD SECONDS, FOR PURPOSES OF THE UNIFORM COMMERCIAL CODE OR OTHER RELEVANT LAW OR CODE, AND THEIR EXCLUSIVE REMEDIES WITH RESPECT TO CLAIMS OF INFRINGEMENT, ALL OTHER WARRANTIES AGAINST INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS, STATUTORY, EXPRESS, IMPLIED, OR OTHER, ARE HEREBY DISCLAIMED.

26. LIMITATION OF LIABILITY.

Buyer shall indemnify Seller for all costs and damages, including attorneys’ fees, suffered by Buyer as a result of Buyer’s actual or threatened breach of these terms and conditions.

27. LIMITATION OF LIABILITY: LIMITATION ON ACTIONS.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THE AGREEMENT: (A) SELLER’S AGGREGATE LIABILITY IN CONNECTION WITH THE AGREEMENT (INCLUDING ALL PROCEEDS THEREOF) AND PRODUCTS, SERVICES, AND/ OR INFORMATION SOLD OR PROVIDED TO BUYER, REGARDLESS OF THE FORM OF ACTION GIVING RISE TO SUCH LIABILITY, AND INCLUDING ANY LIABILITY UNDER THE INDEMNIFICATION PROVISIONS OF THE AGREEMENT (SECTIONS 23 AND 24 OF THESE TERMS AND CONDITIONS), SHALL NOT EXCEED THE AGGREGATE PURCHASE PRICE FOR THE PRODUCTS IN QUESTION PAID BY BUYER TO SELLER UNDER THE AGREEMENT; (B) SELLER SHALL NOT BE LIABLE FOR ANY EXEMPLARY, INCIDENTAL, CONSEQUENTIAL, STATUTORY, PUNITIVE, SPECIAL, OR INDIRECT DAMAGES OF ANY KIND, OR ANY LOSS ARISING FROM BUSINESS INTERRUPTION, LOST PROFITS, LOST REVENUES, LOSS OR CORRUPTION OF DATA, OR LOSS OF USE, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE, LOSS, OR INJURY. EXCEPT AS OTHERWISE PROVIDED, THE PARTIES EXPRESSLY AGREE THAT THE PRODUCTS ARE NOT CONSIDERED TO BE GOOD SECONDS, FOR PURPOSES OF THE UNIFORM COMMERCIAL CODE OR OTHER RELEVANT LAW OR CODE, AND THEIR EXCLUSIVE REMEDIES WITH RESPECT TO CLAIMS OF INFRINGEMENT, ALL OTHER WARRANTIES AGAINST INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS, STATUTORY, EXPRESS, IMPLIED, OR OTHER, ARE HEREBY DISCLAIMED.

26. LIMITATION OF LIABILITY.

Buyer shall indemnify Seller for all costs and damages, including attorneys’ fees, suffered by Buyer as a result of Buyer’s actual or threatened breach of these terms and conditions.

27. LIMITATION OF LIABILITY: LIMITATION ON ACTIONS.
26. NOTICES. 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 deemed received when delivered either (a) two calendar days after mailing by certified mail, return receipt requested and postage prepaid; or (b) one business day after deposit for next day delivery with a commercial overnight carrier provided the carrier obtains a written verification of receipt from the receiving party.

27. SEVERABILITY. In the event any provision or portion of a provision herein is determined to be illegal, invalid, or unenforceable, the validity and enforceability of the remaining provisions shall not be affected and, in lieu of such provision, a provision as similar in terms as possible, legal, valid, and enforceable shall be added hereto.

28. WAIVER. All waivers must be in writing. The failure of either party to insist upon strict performance of any provision 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 herein.

29. APPLICABLE LAW AND FORUM. The Agreement will be governed by and interpreted in accordance with the laws of the country in which the Honeywell selling entity entering into this Agreement is registered. Seller and Buyer expressly agree to exclude from the Agreement the United Nations Convention on Contracts for the International Sale of Goods, 1980, and any successor treaties. Any potential dispute relating to the Agreement will fall under the exclusive jurisdiction of the courts of the country in which the Honeywell selling entity is registered.

30. 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 30 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 present its view of the dispute in detail and the executives will enter into good faith negotiations in an attempt to resolve the dispute. If the dispute is not resolved within 15 days of the end of the conference, then either party may pursue resolution of the dispute consistent with the other terms of the Agreement.

31. 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.

32. INDEPENDENT CONTRACTOR. The parties acknowledge that they are independent contractors and nothing contained in this Agreement shall be construed to constitute either party hereof as the partner, joint venturer, employee, agent, servant, franchisee, or other representative of the other party hereof, and 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.

33. HEADINGS AND SECTIONS. The various headings in this Agreement are inserted for convenience only and will not affect the right of the waiving party to enforce any provision or right herein.

34. 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: (a) 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 of insurance to Seller, containing therein provisions requiring the insurance carrier to notify Seller at least thirty (30) days prior to any expiration or termination of, or material change to the policy. All insurance required under this Agreement shall be placed with insurance carrier(s) that are rated a minimum “A -, X” by AM Best or equivalent rating agency. All certificates shall be delivered to the Seller prior to placement of any orders hereunder. In addition, all such policies shall name Seller as an additional insured.

35. 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.

36. SURVIVAL. All provisions of the Agreement that by their nature should continue in force become the completion or termination of the Agreement will remain in force.