TERMS & CONDITIONS OF SALE

These terms and conditions of sale (“Terms and Conditions”) are effective 01/01/2019 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) products or services (hereinafter referred to as “Products”). References to “Buyer”, “you”, or “your” are to the purchasers of our Products. The Terms and Conditions are valid for all purchase orders and quotations, written or oral, unless otherwise specified between the Seller and the Buyer regarding: (i) the sale of goods or works; (ii) certain line, of business and product-specific exceptions to these Terms and Conditions (“Exceptions”). These Terms and Conditions ("Exceptions") are set forth in Attachment A, A1 and B herein. Unless otherwise noted in the Exceptions, the Exceptions will be read in conjunction with the preceding section of these Terms and Conditions. These Terms and Conditions (if applicable any separate agreement between you and us 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 supersede any prior representations or agreements, oral or written, between the parties related to the subject matter of the Agreement. Any conflict in the provisions of the Agreement shall be resolved by giving precedence in the following order: (i) the separate agreement between you and the Buyer (if any); (ii) the Exceptions; and (iii) the Terms and Conditions. Prices, terms, conditions, and Product specifications are subject to change without notice. However, we will endeavor to give at least thirty (30) days written notice of any changes.

1. PURCHASE ORDERS

Purchase orders are non-cancelable except as expressly set forth herein, including any revised and follow-on order, and will be governed by the terms of the Agreement. Purchase orders shall specify: (a) the Agreement; (b) order number; (c) Buyer’s product number or quotation number; (d) for all shipment and delivery; (e) for any payment or price or schedule modification that may be required by the change request, as determined by Seller in its sole discretion.

2. PRICING

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

3. ORDER MODIFICATIONS

Buyer may request add-ons or changes to quantities in an order within twenty-four hours of order placement (or later in Seller’s sole discretion) by contacting Seller in writing. Any such changes must be accepted by Seller in writing within thirty (30) calendar days from the date of the request. If such request is not accepted, Buyer will 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. Seller will deliver and ship at Buyer’s risk and expense; all risk of loss or damage to Products in transit shall be borne by Buyer. Buyer shall be solely responsible for any damages or claims of Buyer which result from facts or circumstances known to Buyer at the time of order. Buyer shall be responsible for all freight charges and insurance.

4. DELIVERY/SHIPPING TERMS

Delivery dates are estimates. Delivery terms for Products are CIP (Incoterms 2010) Seller’s designated facility, except that Seller is responsible for obtaining any export license. Risk of loss or damage to goods passes to Buyer upon delivery to Buyer or Buyer’s carrier for all shipment and delivery. Seller shall not be deemed delivered if: (a) Buyer’s right to reject or accept 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.

5. ACKNOWLEDGMENTS

Seller will attempt to meet requested delivery dates. However, if Seller cannot meet Buyer’s delivery date, Seller will notify Buyer via phone, 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 receipt of Products, but in no event more than thirty (30) calendar days after receipt. Products will be presumed accepted unless Buyer provides written notice of rejection within thirty (30) calendar days of receipt. 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, at its sole discretion, make changes to Products previously delivered to Buyer.

8. TERMINATION OF SALE

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: (i) payment of reasonable and appropriate termination charges as determined by Seller from time to time. Seller does not accept cancellations for custom or specialty manufactured products, or for non-stocked, extended lead-time products after the Buyer receives order confirmation.

9. TERMS OF PAYMENT

Except as otherwise agreed by Seller, terms of payment shall be as set forth in the order confirmation. Unless otherwise stated in the order confirmation, all costs, duties, and taxes required for delivery of the Products shall be borne by Buyer. Buyer will be responsible for all costs and expenses incurred by Seller in connection with any activity involving nuclear fusion 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/sustainability-and-compliance.

10. TAXES

All prices of the Products are stated as net prices, and do not include any applicable tax (such as value added tax “VAT”). The Seller will charge and the Buyer will pay all applicable taxes resulting from the Agreement or Seller’s performance under the Agreement. This section will survive expiration or termination of the Agreement.

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 freight.

12. BUYER CAUSED DELAY

Seller is not liable for any delays or increased costs caused by delays in obtaining required products or services needed for performance of the Agreement. If such delay causes any delays, Seller is entitled to adjust price, schedule, and other affected terms. If delivery of products, services, or other information necessary for performance of the Agreement is delayed due to purchase of Buyer or Buyer-designated supplier, then Seller may store products at Buyer’s risk and expense and may charge Buyer for the delay.

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 beyond the non-performing party’s reasonable control and may include but is not limited to: (a) delays or referrals to grant an export license or the suspension or revocation thereof, (b) embargoes, blockages, seizure or freeze of assets, or any other acts of any government that would limit performing party's ability to perform under the Agreement, earthquakes, hurricanes, tornadoes, severe weather conditions, or any other acts of God or regional medical crises, (c) shortages or inability to obtain materials or components, (d) labor strikes or lockouts, (e) riots, strife, insurrection, civil disobedience, landowner disturbances, armed conflict, terrorism, or war, declared or not (or impending threat of same), or any act from foreign or our military forces, (f) breakdown of the foregoing, if such threat might reasonably be expected to cause injury to people or property, and (g) any other event beyond Seller’s control not reasonably preventable by Seller’s reasonable efforts.
be kept confidential by the receiving party. These obligations shall not apply to information which the receiving party can show is: (a) publicly known at the time of disclosure or becomes publicly known through no fault of recipient, (b) known to recipient at the time of disclosure through no wrongful act of recipient, (c) received by recipient from a third party without restrictions similar to those in this section, or (d) independently developed by or for the receiving party. Any information that is required to be disclosed in the due course of legal process or in connection with any patent, copyrights, trademarks, and trade secrets. A recipient of confidential information may not disclose such confidential information without the prior written consent of the disclosing party, provided that Seller may disclose the information to subcontractors who have agreed to keep the information confidential. Seller (“Data Processor”) will process personal data of the Buyer (“Data Controller”) and its customers (“end user”) for the purpose of fulfilling services stipulated in the Agreement. Any inquiries from Buyer, the end user or the data controller relating to data processing by the Seller will be responded promptly and fully. Seller is also responsible for ensuring that all data processors agree to the terms and conditions of the Agreement. The Seller will inform the Buyer if the data controller intends to move the burden on handling data access rights to Seller, Seller will ensure these are being handled properly and at Seller costs. The Buyer has the right to audit Seller’s compliance with the applicable data privacy laws and regulations. Buyer acknowledges that, in the event of a breach of these certifications by Buyer, Seller may suffer damage to its reputation and loss of business. Buyer shall immediately provide written notice to Seller if, at any time, Buyer knows or has a reasonable suspicion of a violation of any applicable Anti-Corruption Law, or the Code of Conduct. Buyer knows or has a reasonable suspicion of a violation of any applicable Anti-Corruption Law, or the Code of Conduct. Buyer shall immediately provide written notice to Seller if, at any time, Buyer knows or has a reasonable suspicion of a violation of any applicable Anti-Corruption Law, or the Code of Conduct. Buyer shall immediately provide written notice to Seller if, at any time, Buyer knows or has a reasonable suspicion of a violation of any applicable Anti-Corruption Law, or the Code of Conduct. Buyer shall immediately provide written notice to Seller if, at any time, Buyer knows or has a reasonable suspicion of a violation of any applicable Anti-Corruption Law, or the Code of Conduct. 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22. TECHNICAL ADVICE

Any recommendations or assistance provided by Seller concerning the use, design, application, or operation of the goods shall not be construed as representations or warranties of any kind, express or implied, and such information is accepted by Buyer at Buyer’s own risk and without any obligation or liability to Seller. It is the Buyer’s sole responsibility to determine the suitability of the Products for use in Buyer’s application(s). The failure by Seller to make recommendations or provide assistance shall not give rise to any liability for Seller.

23. INDEMNIFICATION AGAINST PATENT AND COPYRIGHT INFRINGEMENT

Seller shall defend Buyer against the Buyer based on a claim that the Product as delivered by Seller directly infringes a valid United States or European or Swiss 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 that such claim is against Buyer and all matters related to the claim it receives 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. Seller 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 agree to any compromise, fee or cost incurred by Buyer for any settlement without Seller’s prior, written consent thereto. Seller will have the right to the extent that the claims related to the Product are covered by any applicable insurance, make decisions on Seller’s behalf without its prior, 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 ON ACTIONS

Seller shall defend Buyer against any suit against Buyer based on a claim that the Product infringes a valid United States or European or Swiss 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 that such claim is against Buyer and all matters related to the claim it receives 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. Seller 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 agree to any compromise, fee or cost incurred by Buyer for any settlement without Seller’s prior, written consent thereto.

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 AND THE SALE OF PRODUCTS AND PROVISION OF SERVICES 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 PURCHASED AND/OR SERVICES Rendered FOR THE ORDER; (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; (C) EXCEPT IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY; THE PARTIES EXPRESSLY AGREE THAT THE PRODUCTS ARE NOT CONSIDERED FOODS FOR USE PRIMARILY FOR PERSONAL, FAMILY, OR HOUSEHOLD PURPOSES, OR CONSUMER GOODS; THE LIMITATIONS OF LIABILITY CONTAINED IN THE INDEMNIFICATION PROVISIONS OF THE AGREEMENT (SECTIONS 23 AND 24 OF THESE TERMS AND CONDITIONS) AND THIS SECTION 25 ARE A FUNDAMENTAL PART OF THE BASIS OF SELLER’S BARGAIN HEREUNDER, AND SELLER WOULD NOT ENTER INTO THIS AGREEMENT ABSENT SUCH LIMITATIONS. TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE LIMITATIONS AND EXCLUSIONS OF THIS SECTION 25 WILL APPLY WHETHER LIABILITY ARISES FROM BREACH OF CONTRACT, INDEMNITY, WARRANTY, TORT (INCLUDING BUT NOT LIMITED TO NEGLIGENCE), OPERATIONS, OR ANY OTHERWISE. SELLER WILL NOT BE LIABLE FOR 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.

If, for reasons other than a “force majeure” event, Seller should default or delay or not deliver goods, Buyer's sole remedy against Honeywell is an option to cancel Buyer’s purchase order, through prior written notice to Honeywell.

26. NOTICES. Every notice between the parties relating to the performance or administration of the Agreement shall be in writing unless otherwise provided in this Agreement and, in that event, said parties shall execute and deliver to Buyer and Seller a written notice of such change in accordance with 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 may be 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 [State], and all disputes arising out of or related to this Agreement are subject to the exclusive jurisdiction of the [State] courts, and 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 thereto. 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 through this 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 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 hereto as the partner, joint venturer, employee, agent, servant, franchisee, or other representative of the other party hereto, 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 Seller 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 meaning or interpretation of this Agreement or any paragraph or section thereof.

34. INSURANCE. Unless agreed otherwise, Seller shall, at all times that the Agreement is in force and effect, have in force and effect insurance covering all the Products furnished hereunder with a single limit of CHF 1,000,000 per occurrence and CHF 1,000,000 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) days prior to any expiration or termination of, or material change to the policy. All insurance policies issued 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 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, the completion or termination of the Agreement will remain in force.