

## TERMS AND CONDITIONS

Except as agreed to on the face hereof, the following terms and conditions apply without exception to all sales described on the face hereof by Sensing & Control, a strategic business unit of Honeywell International Inc. ("Honeywell") to Buyer.

**1. SOLE TERMS.** Honeywell's sale is expressly limited to the terms herein and any additional or different 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 Honeywell. Honeywell's acceptance of Buyer's purchase order is expressly conditional upon Buyer's assent to the terms and conditions contained herein in their entirety. Buyer's acceptance of delivery from Honeywell constitutes Buyer's acceptance of these terms and conditions in their entirety.

**2. QUOTE/ PRICES.** Honeywell's quotation, if constituting the reverse side of this document, is firm only if Buyer enters an order within the time specified on the quote or, if none be mentioned, 30 days. Buyer must request shipment of the entire quantity of goods ordered within 12 months from date of order, otherwise, Honeywell standard prices at time of shipment may, at Honeywell's option, apply to those quantities actually delivered, even if already invoiced. All tooling, designs, drawings, and other intellectual property produced or delivered hereunder are owned by Honeywell. If, at any time, Honeywell's costs of materials have increased by 5% or more, then Honeywell may increase the price on all affected products accordingly with respect to existing and future Honeywell quotations and/or Buyer purchase orders.

**3. PAYMENT.** Unless otherwise stated on the face hereof, all payments are to be in US currency and are due within 30 days from date of invoice. Invoices remaining unpaid after their due date will be subject to an interest charge of 1.5% per month (or the maximum rate allowed by law). Buyer will pay all costs of collection on unpaid amounts, including attorneys' fees.

**4. DELIVERY.** Delivery terms for goods are EXWORKS (Incoterms 2000) Honeywell's facility for international shipments and F.O.B. Honeywell's facility for all US domestic shipments, with all risk of loss or damage to goods passing to Buyer upon delivery to carrier. Within 30 days of delivery, any claim for shortage must be reported in writing to Honeywell, otherwise all goods will be deemed delivered and accepted. Buyer shall be liable for any delays or increased costs incurred by Honeywell caused by or related to Buyer's acts or omissions.

**5. TAXES.** The amount of any and all applicable taxes will be added to the price and paid by Buyer, unless Buyer has provided Honeywell with exemption certificates acceptable to the taxing authorities.

**6. FORCE MAJEURE.** Honeywell is not liable for any delay in production or delivery of goods if due to a force majeure event, which includes, among other things, inability or refusal by third party suppliers to provide Honeywell with raw materials, components, parts, services, manuals, or other information necessary for Honeywell's performance, government embargoes, blockades, seizure or freeze of assets, delays or refusals to grant an export license or the suspension or revocation thereof, or any other acts of any government that would limit the ability for contract performance, fire, earthquake, flood, severe weather conditions, epidemics, pandemics, or any other acts of God, quarantines, labor strikes or lockouts, riots, strife, insurrection, civil disobedience, armed conflict, terrorism or war (or imminent threat of same), or any other cause whatsoever beyond Honeywell's reasonable control. If the force majeure event continues for longer than 90 days, either party may terminate Buyer's purchase order and Buyer will pay Honeywell for work performed prior to termination and all reasonable expenses incurred by Honeywell as a result of such termination. In the event of delays in delivery or performance caused by force majeure or Buyer, the date of delivery or performance shall be extended by the period of time Honeywell is actually delayed or as mutually agreed. If, for reasons other than the foregoing, Honeywell 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.

**7. TERMINATION.** Except as may be specified differently by Honeywell on the face hereof, Buyer may for any reason terminate an order in whole or in part upon written notice to Honeywell, which shall be provided no less than 60 days or the standard lead time (whichever is shorter) in advance of the requested delivery date. Goods scheduled for shipment within 30 days cannot be rescheduled or cancelled. Goods scheduled for shipment between 30 and 60 days may be rescheduled. If, however, goods within the 30-60 day window are rescheduled beyond 60 days that quantity is then non-cancelable and may not be further rescheduled. Buyer shall, nonetheless, be liable for termination charges, which may include (a) a price adjustment based on the quantity of goods delivered, (b) all costs, direct and indirect, incurred and committed for Buyer's canceled order, (c) the full cost of all unique materials required for custom goods, and (d) a reasonable allowance for prorated expenses and anticipated profits consistent with industry standards. Honeywell may terminate an order in whole or in part upon Buyer's breach of these terms and conditions or Buyer's bankruptcy, insolvency, dissolution, or receivership proceedings.

## 8. INFRINGEMENT INDEMNIFICATION.

(a) Honeywell agrees to (i) defend or settle any claim, suit, or proceeding brought against Buyer based solely upon a claim that any goods manufactured and provided solely by Honeywell hereunder directly infringe any third party US patent, copyright, or maskwork, and (ii) to pay costs and

damages finally awarded to the third party, provided that: (A) Honeywell is notified promptly in writing of such claim, (B) Honeywell is provided sole control of such defense or settlement using counsel of Honeywell's choice, and (C) Buyer provides Honeywell with all available information and assistance. Because Honeywell has exclusive control over resolving infringement claims hereunder, in no event will Honeywell be liable for Buyer's attorneys' fees, if any.

(b) Honeywell shall not be responsible for any settlement or compromise of any such third party claim made without Honeywell's written consent. Honeywell has no obligation and this Section 8 will not apply to any claim of infringement of any intellectual property right of a third party (i) by goods not in Honeywell's catalog or goods developed pursuant to Buyer's direction, design, process, or specification, (ii) by the combination of any goods with other elements if such infringement could have been avoided but for such combination, (iii) by goods that have been modified if such infringement would have been avoided by the unmodified goods, (iv) by goods not used for their ordinary purpose, or (v) by software if such software is other than the latest version of the software released by Honeywell. Buyer agrees to defend, indemnify, and hold harmless Honeywell from and against any claims, suits, or proceedings whatsoever arising from such exclusions identified in this Section 8(b).

(c) At any time after a claim has been made or Honeywell believes is likely to be made, or a court of competent jurisdiction enters an injunction from which no appeal can be taken, Honeywell will have at its option the discretion to (i) procure for Buyer the right to continue using such goods, (ii) replace or modify such goods, or (iii) accept the return of such goods and refund the purchase price less 20% annual depreciation from shipment date. The foregoing states Honeywell's entire liability and Buyer's exclusive remedy for any actual or alleged infringement of intellectual property rights. THIS SECTION 8 IS IN LIEU OF AND SUPERSEDES ALL OTHER EXPRESSED, IMPLIED, OR STATUTORY WARRANTIES RELATED TO INTELLECTUAL PROPERTY INFRINGEMENT.

**9. SOFTWARE.** Software, if listed on the face hereof or installed on a good listed on the face hereof, is governed by the following terms unless a software license agreement is included with such software. Software is hereby licensed and not sold. Subject to Buyer's compliance with these terms and conditions, Honeywell grants a personal, limited, nonexclusive license to use the object code of the software solely for Buyer's internal purposes. The license is limited to such goods and/or location(s) as are specified on Buyer's purchase order for which this instrument serves as either a quotation or acknowledgment. No other use is permitted. Honeywell retains for itself (or, if applicable, its suppliers) all title and ownership to any software delivered hereunder, all of which contains confidential and proprietary information and which ownership includes, without limitation, all rights in patents, copyrights, trademarks, and trade secrets. Buyer shall not attempt any sale, transfer, sublicense, reverse compilation, disassembly, or redistribution of the software except as expressly permitted herein. Nor shall Buyer copy, disclose, distribute, or display any such software, or otherwise make it available to others (except as Honeywell authorizes in writing) or allow any unauthorized use of the software. If the software is delivered with a good listed on the face hereof, Buyer may only transfer its license of the software to a third party in conjunction with the sale by Buyer of the good on which the software is installed. Honeywell may terminate this license if Buyer defaults under these terms and conditions.

## 10. WARRANTY. THE FOLLOWING IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THOSE OF MERCHANTABILITY AND FITNESS FOR PARTICULAR PURPOSE.

Except as otherwise expressly provided herein, Honeywell warrants goods of its manufacture to be free of defective materials and faulty workmanship and as conforming to applicable specifications and/or drawings. Honeywell may, without notice to Buyer, incorporate changes to goods that do not alter form, fit, or function. Commencing with Honeywell's date of shipment, Honeywell's warranty shall run for the period specified on the face hereof or, if none be mentioned, 12 months. Non-complying goods returned transportation prepaid to Honeywell will be repaired or replaced, at Honeywell's option, and return-shipped lowest cost, transportation prepaid. No goods will be accepted for return without an authorization number obtained in advance of shipment to Honeywell. Goods subject to wear and tear or burnout through usage shall not be deemed defective because of such wear and tear or burnout. No warranty shall apply if, in the sole opinion of Honeywell, the defect or damage was caused by or related to installation, combination with other parts and/or products, modification to or repair of any goods other than by Honeywell, or resulted from Buyer's acts, omissions, misuse, or negligence. Repaired or replaced goods shall be warranted for the remainder of the unused warranty term or for 90 days from shipment, whichever is longer. Experimental goods (designated by the letter "X" or "E" beginning their part number identification) or unreleased or beta software are prototype, pre-production items that have yet to complete all phases of release testing; these goods are sold "AS IS" WITH NO WARRANTY. Software, if listed on the face hereof and/or used within goods listed on the face hereof and warranted by Honeywell, will be furnished on a medium that's free of defect in materials or workmanship under normal use for so long as the hardware and/or system is under warranty. During this period, Honeywell will replace without charge any

such medium it finds defective. As for the quality or performance of any software or data, they are supplied "AS IS" WITH NO WARRANTY. Where hardware and/or a system is installed by Honeywell, such installation is warranted against faulty workmanship for the same period (if any) as applies to the installed items. During this concurrently running period, Honeywell will correct without charge any workmanship it finds to be faulty. These warranties are for the benefit of the Buyer only and are not assignable or transferable.

**11. LIMITATION OF LIABILITY.** IN NO EVENT SHALL HONEYWELL BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES (INCLUDING, WITHOUT LIMITATION, ANY AND ALL DAMAGES FROM BUSINESS INTERRUPTION, LOSS OF PROFITS OR REVENUE, COST OF CAPITAL, OR LOSS OF USE OF ANY PROPERTY OR CAPITAL) EVEN IF HONEYWELL HAS BEEN ADVISED OF, OR IS OTHERWISE AWARE OF, THE POSSIBILITY OF ANY SUCH DAMAGES AND/OR CLAIMS. THE EXCLUSION OF SUCH DAMAGES AND/OR CLAIMS SHALL BE DEEMED INDEPENDENT OF, AND SHALL SURVIVE, ANY FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY ARISING FROM THE PURCHASE AND/OR THESE TERMS AND CONDITIONS. HONEYWELL'S LIABILITY FOR DAMAGES HEREUNDER SHALL IN NO CASE EXCEED THE CONTRACT PRICE FOR THE SPECIFIC GOODS THAT GIVE RISE TO THE BREACH. THESE EXCLUSIONS AND LIMITATIONS ON DAMAGES SHALL APPLY REGARDLESS OF HOW THE LOSS OR DAMAGE MAY BE CAUSED AND AGAINST ANY THEORY OF LIABILITY, WHETHER BASED ON CONTRACT, INDEMNITY, WARRANTY, TORT, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER THEORY.

**12. RECOMMENDATIONS.** Any recommendations or assistance provided by Honeywell 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 Honeywell. It is the Buyer's sole responsibility to determine the suitability of the goods for use in the Buyer's application(s). The failure by Honeywell to make recommendations or provide assistance shall not give rise to any liability to Honeywell.

**13. LAWS.** Buyer will comply with all applicable laws, regulations, and ordinances of any governmental authority in any country having proper jurisdiction, including, without limitation, those laws of the United States or other countries that regulate the import or export of the goods provided by Honeywell and shall obtain all necessary import/export licenses in connection with any subsequent import, export, re-export, transfer, and use of all goods, technology, and software purchased, licensed, and received from Honeywell. Unless otherwise mutually agreed in writing, Buyer agrees that it will not use the goods 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.

**14. PRECLUSION AGAINST SETOFF.** Buyer shall not set off any invoiced amount against any amount due or to become due from Honeywell to Buyer or its affiliates.

**15. APPLICABLE LAW.** The laws of the State of New York will govern, excluding its provisions on conflict of laws. These terms and conditions are excluded from the United Nations Convention on Contracts for the International Sale of Goods, 1980, and any successor thereto. The Federal and State courts within New York will have exclusive jurisdiction to adjudicate any dispute related to these terms and conditions.

**16. INDEMNIFICATION.** Buyer shall indemnify Honeywell for all costs and damages, including attorneys' fees, suffered by Honeywell as a result of Buyer's actual or threatened breach of these terms and conditions.

**17. MISCELLANEOUS.** These terms and conditions (including those stated on the face hereof) constitute the entire agreement of Honeywell and Buyer, superseding all prior agreements or understandings, written or oral, and cannot be amended except by a mutually executed writing. Buyer may not assign any rights or duties hereunder without Honeywell's written prior consent. Honeywell may subcontract its obligations hereunder without Buyer's consent. No representation, warranty, course of dealing, or trade usage not contained or expressly set forth herein will be binding on Honeywell. Headings and captions are for convenience of reference only and do not alter the meaning or interpretation of these terms and conditions. No failure by Honeywell to enforce at any time for any period the provisions hereof shall be construed as a waiver of such provision or of the right of Honeywell to enforce thereafter each and every provision. In the event any 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. Provisions herein which by their very nature are intended to survive termination, cancellation, or completion of Buyer's order after acceptance by Honeywell shall survive such termination, cancellation, or completion. All stenographic and clerical errors are subject to correction.

# Honeywell

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