

**1. GENERAL DEFINITIONS**

- 1.1. **"Agreement"** means the written agreement, including these Sales Terms and Conditions and any addendum to them ("Addendum") together with relevant Orders, made between Buyer and Honeywell for the Deliverables.
- 1.2. **"Buyer"** means the entity issuing the Order.
- 1.3. **"Deliverables"** means equipment and parts (collectively **"Products"**), services (**"Services"**) and Software, each supplied or licensed by Honeywell to Buyer under the Order.
- 1.4. **"Honeywell"** means Elster Metering Limited (now part of Honeywell), operating through its Process Solutions business unit, and its officers, directors, and employees.
- 1.5. **"Order"** means a Buyer purchase order accepted by Honeywell.
- 1.6. **"Party"** means Honeywell or Buyer and **"Parties"** means both.
- 1.7. **"Software"** means software and firmware provided by Honeywell, and all related documentation, data files, modules, libraries, and elements. Software includes any updates, upgrades, error corrections, changes or revisions delivered by Honeywell to Buyer under the Agreement or a separate agreement.

**2. DELIVERY AND ACCEPTANCE**

Delivery terms are EX-Works (INCOTERMS 2010) Honeywell's facility, unless FCA is stated in the Order. Title to Products passes to Buyer when Honeywell places Products at Buyer's disposal at Honeywell's facility. Buyer grants Honeywell a security interest in Products until paid in full, subject to applicable law. Deliverables are deemed accepted unless Buyer sends written notice specifying reasonable basis for rejection within 30 days after delivery. Honeywell will, at its option, repair, replace, or re-perform rejected Deliverables.

**3. PAYMENT**

Payment terms are net 30 days from date of invoice with payment made in immediately available funds through electronic transfer. Honeywell may suspend Deliverables and charge an administrative fee on delinquent amounts for non-payment at the lesser of 1.5% per month for each full or partial month or the maximum legal rate available under the governing law and recover all costs of collection, including attorneys' fees. Buyer may not set off invoiced amounts against sums that are due from Honeywell. Honeywell's extension of credit is subject to Buyer maintaining an acceptable credit standing.

**4. TAXES**

Honeywell invoices for taxes, duties and charges, which are Buyer's responsibility, unless Buyer provides acceptable exemption verification.

**5. FORCE MAJEURE AND DELAY**

Except payment obligations, neither Party is liable for failure to meet its obligations affected by a force majeure event. If performance is so delayed longer than 90 days, either Party can terminate the Order with notice. If Buyer causes delay, Honeywell is entitled to adjust price, schedule and other affected terms.

**6. WARRANTIES**

- 6.1. Honeywell warrants Honeywell Products comply with applicable Honeywell specifications and are free from material defects in workmanship and material for 12 months after date of delivery, and Services materially comply with defined requirements for 30 days from the date services are performed. Third party warranties, if any, are transferred to Buyer to the extent Honeywell has the right to transfer. Honeywell will, at its option, repair or replace defective Products, if returned to Honeywell within the warranty period, and re-perform defective Services if notified to Honeywell during the warranty period. Products repaired or replaced and Services re-performed are warranted for the remainder of the original warranty period or 90 days (for Products) whichever is longer.
  - 6.2. Honeywell is not, and will not be, liable for defects attributable to: (a) non compliance with Honeywell's instructions, (b) unauthorized alterations or repairs, (c) accident, contamination, abuse, or negligence, or (d) damage caused by failure of any item or service not supplied by Honeywell.
  - 6.3. WARRANTIES IN THIS SECTION ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER WRITTEN, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR PARTICULAR PURPOSE. THE REMEDIES IN THIS SECTION ARE BUYER'S ONLY REMEDIES FOR BREACH OF WARRANTY.
- 7. LIMITATION OF LIABILITY**
- IN NO EVENT WILL HONEYWELL BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, STATUTORY OR INDIRECT DAMAGES, INCLUDING WITHOUT LIMITATION, LOSS OF PROFITS, REVENUES OR USE, OR THE LOSS OR CORRUPTION OF DATA, EVEN IF INFORMED OF THE POSSIBILITY OF THESE DAMAGES. THE AGGREGATE LIABILITY OF HONEYWELL RELATED TO THE ORDER WILL IN NO CASE EXCEED THE LESSER OF THE INITIAL ORDER PRICE OR US \$1,000,000. TO THE EXTENT PERMITTED BY APPLICABLE LAW, THESE LIMITATIONS AND EXCLUSIONS APPLY IF LIABILITY ARISES FROM BREACH OF CONTRACT, INDEMNITY, WARRANTY, TORT (INCLUDING NEGLIGENCE), OPERATION OF LAW, OR OTHERWISE.
- 8. PATENT AND COPYRIGHT INDEMNITY**
- 8.1. Honeywell will defend any suit against Buyer claiming that a Deliverable infringes a valid United States patent or copyright existing as of the Agreement effective date and will indemnify Buyer for any final judgment against Buyer

resulting from the suit provided Buyer: (a) gives Honeywell prompt notice when Buyer becomes aware of a third-party claim, (b) gives complete authority and assistance (at Honeywell expense) for disposition of the claim, and (c) makes no prejudicial admission about the claim.

- 8.2. Honeywell has no liability, and Buyer will indemnify Honeywell for claims related to: (a) Deliverables supplied per Buyer designs, drawings or specifications, (b) Deliverables used other than for the purpose for which they were delivered, (c) combining a Deliverable with a product or software not supplied by Honeywell, (d) modification of a Deliverable by anyone other than Honeywell, (e) compromise or settlement made without written Honeywell consent, or (f) Buyer's failure to install updates, upgrades, error corrections, changes, or revisions provided by Honeywell. Honeywell has no liability for Buyer's costs or attorney fees.
- 8.3. If an infringement claim is made or is likely, Honeywell may at its option and expense: (a) procure the right for Buyer to continue using the Deliverable, (b) modify the Deliverable to be non-infringing, or (c) accept return of the Deliverable (and terminate Buyer's applicable software license) and credit Buyer the purchase price paid for the Deliverable, less reasonable depreciation for use, damage and obsolescence. Failure of Buyer to accept any of the above remedies in lieu of the infringing Deliverable relieves Honeywell of any liability for infringement. Failure to ship infringing Deliverables will not breach the Agreement.
- 8.4. THIS SECTION STATES HONEYWELL'S ENTIRE LIABILITY AND BUYER'S SOLE RECOURSE AND EXCLUSIVE REMEDIES WITH RESPECT TO INFRINGEMENT. ALL WARRANTIES AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS, WHETHER STATUTORY, EXPRESS OR IMPLIED, ARE DISCLAIMED.

**9. CHANGE ORDERS**

Either Party may make changes within the scope of an Order subject to acceptance by the other Party. Honeywell will inform Buyer if the change causes a price or schedule adjustment. The change will be effective and Honeywell may begin performance upon the Parties' authorized signature of a change order.

**10. DEFAULT AND TERMINATION**

Either Party may terminate or suspend an Order for material breach of the Agreement if the breaching Party fails to begin a cure within 10 days after receipt of written notice from non-breaching Party specifying the grounds, and to continue diligently to cure the breach.

**11. INVENTIONS AND INTELLECTUAL PROPERTY**

- 11.1. **"Intellectual Property"** means all copyrights, trademarks, trade secrets, patents, utility models and other intellectual property rights recognized in any jurisdiction worldwide, including all applications and registrations.
- 11.2. No right, title or interest in Intellectual Property provided by Honeywell is transferred to Buyer under the Agreement, including Intellectual Property existing prior to, or created independently of, the performance of the Agreement. All Intellectual Property and results of Services, including software, models, designs, drawings, documents, inventions, and know-how (**"Inventions"**), conceived or developed by Honeywell in connection with the Agreement, are the sole property of Honeywell and Buyer assigns any rights it may have in such Inventions to Honeywell. Buyer has no right or license to Intellectual Property or Inventions provided by Honeywell, except as granted in the Agreement.
- 11.3. Honeywell and its suppliers retain all right, title and interest to all Software, and all modifications and enhancements thereof, and no right, title, or interest in the Software, or any copies thereof, is transferred to Buyer. Buyer will hold all Software supplied by Honeywell in strict confidence and will use best efforts not to disclose Software to others. All Software delivered by Honeywell is subject to a software license (**"License"**). If Buyer does not agree to a License with Honeywell, Buyer does not have a license or right to Software.

**12. CONFIDENTIAL INFORMATION**

- 12.1. **"Confidential Information"** is information that: (a) is marked as "Confidential" or "Proprietary" at the time of disclosure; or (b) is disclosed orally or visually, is identified by the Party disclosing the information (**"Discloser"**) as confidential at the time of disclosure, and is designated as confidential in a writing sent to the receiving Party (**"Recipient"**) within 30 days after disclosure that summarizes the Confidential Information sufficiently for identification, or (c) is Personal Data.
- 12.2. **"Personal Data"** means any information relating to or unique to an identified or identifiable natural person or which can be used to identify a particular person; an identifiable person is the person who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his physical, psychological, mental, economic, cultural or social identity.
- 12.3. **"Safe Harbor Personal Data"** means Personal Data that (a) originates and is transferred from Honeywell affiliates in the European Economic Area and/or Switzerland to Supplier in the US pursuant to the U.S. - EU or U.S. - Switzerland Safe Harbor Framework or (b) is otherwise subject to the U.S. - EU or U.S. - Switzerland Safe Harbor Guidelines by virtue of a transfer from Honeywell to Supplier.
- 12.4. **"Security Breach"** means any event involving a compromise of the confidentiality of the Personal Data of any Honeywell employee(s) or the systems or databases on which the Personal Data of Honeywell employees is processed. It includes any unauthorized or impermissible access, use, theft or loss of Personal Data.

## SALES TERMS AND CONDITIONS

- 12.5. Recipient will: (a) use the Confidential Information only for the performance of the Agreement ("**Purpose**"); (b) disclose Confidential Information only to its employees and any sub-contractors or third parties ("**sub-processors**") required to have Confidential Information for the Purpose and who are legally bound in writing to Recipient to protect the Confidential Information in accordance with terms and conditions no less stringent than those imposed under this Agreement; and (c) protect Confidential Information using the same degree of care, but no less than reasonable care, as Recipient uses to protect its own confidential information of a like nature. Recipient will reproduce the restrictive legends of the original on copies it makes. Recipient may disclose Confidential Information to a third party only if authorized in writing and under conditions required by Discloser. Recipient is responsible to Discloser for any violation of the confidentiality obligations by its employees or an authorized third party. Within 30 days of Discloser's written request, Recipient will return or destroy all Confidential Information of Discloser, including all copies thereof, and will certify to such return or destruction in writing to Discloser. Unless otherwise specified, each Party's obligations with respect to the Confidential Information of the other Party will continue for five years after the date of receipt.
- 12.6. Confidential Information will not include any information that: (a) was in Recipient's possession and not subject to an obligation of confidentiality before receipt from Discloser; (b) is or becomes legally available in the public domain through no fault of Recipient; (c) was rightfully received by Recipient from a third party who had no obligation of confidentiality, either directly or indirectly, to Discloser; or (d) was independently developed by Recipient without use of or reference to Discloser's Confidential Information. If Recipient is required to disclose Confidential Information by applicable law, statute, regulation, or court order, Recipient will (x) give Discloser prompt written notice of the request and a reasonable opportunity to object to the disclosure and seek a protective order or appropriate remedy; and (y) disclose Confidential Information only to the extent required.
- 12.7. The parties agree that breach of the confidentiality obligations by the Recipient will cause irreparable damage for which money damages will not be fully adequate, and Discloser is entitled to seek injunctive relief, in addition to any other legal remedies.
- 12.8. Recipient agrees to comply with all applicable law or regulation relating to its use of Personal Data, which shall include, without limitation, requirements that the Recipient: (a) take appropriate technical and organizational security measures or such measures required by Honeywell to protect Personal Data; (b) indemnify Honeywell against all losses, costs, expenses, damages, liabilities, demands, claims, actions or proceedings which Honeywell may suffer incur arising out of any Security Breach or other breach of this section concerning Confidential Information (including by any employee or sub-processor); and (c) promptly notify Honeywell about any Security Breach, any request for disclosure of Personal Data by a law enforcement agency (unless otherwise prohibited) or any requests received by individuals to whom Personal Data relates, without responding to such request unless otherwise authorized by Honeywell. If Recipient transfers Safe Harbor Personal Data outside of the EU or Switzerland to the United States, Recipient warrants that it either: (i) self-certifies to the U.S.-EU and U.S.-Switzerland Safe Harbor Framework; or (ii) adheres to Safe Harbor principles.
- 13. MISCELLANEOUS**
- 13.1. Each Party is responsible for compliance with all import, export, and re-export control laws and regulations and will mutually cooperate as needed.
- 13.2. Honeywell may suspend Services at Buyer's expense if Honeywell determines that performance of Services may compromise safety.
- 13.3. If any provision of the Agreement is determined to be illegal, invalid, or unenforceable, the validity of the remaining provisions will not be affected.
- 13.4. The failure of either Party to enforce at any time any provision of the Agreement may not be construed to be a continuing waiver of those provisions.
- 13.5. The Agreement is governed by the laws of England, without regard to conflicts of law principles. Application of the Uniform Computer Information Transactions Act and United Nations Convention on Contracts for the International Sale of Goods, 1980, and any successor law to either, is specifically excluded. The Parties waive any right to a trial by jury for disputes and submit to the exclusive jurisdiction of the Technology and Construction Court in London, UK for resolution of disputes; however, Honeywell may seek an injunction or enforce a judgment against Buyer in any jurisdiction. Buyer will not bring a legal action more than two years after the cause of action arose unless a shorter period is provided by applicable law.
- 13.6. The Agreement contains the entire agreement between the Parties and any pre-printed terms are excluded. Any terms on facility entry documents or other similar documents signed by Honeywell after the Order date are not applicable. If there is any conflict in terms, the order of precedence is the License, any Addendum, the acceptance, the Agreement (excluding the Order), and then the Order.
- 13.7. The Agreement may not be varied except by a written change signed by authorized representatives of both Parties. Provisions of the Agreement that by their nature should continue in force beyond the completion or termination of the Order will remain in force. Buyer will not delegate, transfer, or assign, by operation of law or otherwise, the Agreement, or rights or obligations under it, without Honeywell's prior written consent and any attempt to do so is void.

For purposes of this Section, assignment includes any change in control of the Buyer or the merger of Buyer with any other legal entity.

### **14. NON-SOLICITATION**

- 14.1. Buyer agrees that it will not solicit for employment or employ directly or through a third party, any management, sales, technical or service representative employed by Honeywell and assigned to provide services to Buyer (a "Honeywell Protected Employee") at any time during the term of this Agreement and for one year after any Honeywell Protected Employee ceases to be employed by Honeywell. Buyer recognizes that Honeywell has incurred substantial costs in recruiting, training and providing Buyer with service personnel who have received specialized training and information necessary to service Buyer for Honeywell. Buyer agrees that if Buyer does not comply with this requirement, then Honeywell will suffer damages that cannot be easily determined and Buyer will pay (a) for any costs related to replacing the hired Honeywell Protected Employee at the Buyer site where the services are provided, including but not limited to, travel and other relocation costs, and (b) as liquidated damages, in addition to any other remedies provided at law or equity, the sum of \$150,000 (one hundred and fifty thousand U.S. dollars or the equivalent in the Order currency) to Honeywell. Buyer agrees that this sum is a reasonable approximation of the amount necessary to compensate Honeywell for its loss and that it is not in the nature of a penalty.

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