 TERMS & CONDITIONS OF SALE

These terms and conditions of sale (“Terms and Conditions”) are effective 1st May 2022 and supercede 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 “you”, “your”, or “yours” elsewhere in these Terms and Conditions refer to the Buyer or other parties related to the subject matter of the Agreement. The Agreement may not be varied except in a writing signed by an authorized representative of each party. Any conflict in the provisions of the Agreement shall be resolved by giving precedence in the following order: (i) the separate agreement between Seller and Buyer (if any); (ii) the Exceptions; and (iii) the Terms and Conditions.

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 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 Seller. Seller’s acceptance of Buyer’s purchase order is expressly conditioned upon Buyer’s assent 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. Unless otherwise agreed by Seller, all Purchase Orders must be placed through Honeywell Partner eCommerce Platform (https://www.honeyWellSafety.com) or any successor website advised by Seller in writing. If Buyer is allowed by Seller, in its sole discretion, to place manual Purchase Orders, a charge of USD 35 (or EUR equivalent) may be assessed to any manually placed Purchase Order.

2. PRICING.

Unless stated otherwise in the Seller’s order confirmation, prices are CIP (Incotems 2010) and the Buyer is additionally liable to pay the transportation, 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, or change to orders by providing Seller with written notice. If Seller accepts any changes, it shall be in writing. If Seller accepts any changes, all changes are effective upon Seller’s written confirmation. Seller reserves the right to reject any change request, including, but not limited to requiring advance payment and failing to reply to Buyer’s request for changes.

4. DELIVERY/SHIPPING TERMS.

Delivery dates are estimates. Delivery terms for Products are CIP (Incotems 2010) Seller’s designated facility. Risk of loss or damage to Product passes to Buyer upon delivery, which is the point where the Product are taken in charge by the first carrier. Seller shall pay for customs, shipping and insurance. Seller shall invoice Buyer for all handling, and similar charges incurred by Seller in shipping Products to Buyer, and Buyer shall pay such charges pursuant to the agreed-upon payment terms. Seller also reserves the right to charge for delivery of Products to Buyer’s freight collect. Within thirty (30) days of delivery, any claim for shortage must be reported in writing to Seller; otherwise, all Products shipped will be deemed delivered and accepted. Buyer shall be liable for any delays or increased costs incurred by Seller caused by or related to Buyer’s acts or omissions. Title to Product passes to Buyer upon full payment.

Seller will schedule delivery (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. Early shipments will be processed using the same method and carrier identified in the order confirmation.

5. ACKNOWLEDGEMENTS.

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 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 will have a reasonable opportunity to repair or replace rejected Products, at its option. Seller assumes shipping costs in an amount not to exceed normal surface shipping charges to Seller’s designated facility for the return of properly rejected 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. 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 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 as they are shipped. Unless Buyer has been approved for credit terms by Seller, payment for all orders will be made at the time of order placement. In the event Buyer has been approved for credit terms, payment for that order will be due no later than 30 calendar days from the date of the invoice, unless a shorter time period is specified on the invoice or otherwise communicated to Buyer in writing. Seller will determine in its sole discretion if Buyer qualifies for credit terms. If credit terms are granted, Seller may change Buyer’s credit terms at any time in its sole discretion and may, without notice to Buyer, modify or withdraw credit terms for any order, including options. Seller is not required to provide a hard copy of the invoice. Payments must be made in the currency set out in Honeywell’s order confirmation unless agreed otherwise in writing and must be accompanied by remittance detail containing at a minimum the Buyer’s order number, Seller’s invoice number and amount paid per invoice; Buyer agrees to pay a service fee in the amount of $500 for each occurrence for its failure to include the remittance detail and minimum information described above. Payments must be in accordance with the “Remit To” field on each invoice. If Buyer makes any unapplied payment and fails to reply to Seller’s request for instruction on allocation within seven (7) calendar days, Seller may set off such unapplied cash amount against any Buyer past due invoices(s) at its sole discretion. An unapplied payment shall mean payment(s) received from Buyer without adequate remittance detail to determine what invoice the payment(s) shall be applied to. Disputes as to invoices must be accompanied by detailed supporting information and are deemed waived 15 calendar days following the invoice date. Seller reserves the right to correct any inaccurate invoices. Any corrected invoice must be paid by the original invoice payment due date or the issuance date of the corrected invoice, whichever is later. 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 a rate of ten (10) percentage points above the base interest rate applied by the European Central Bank to its main refinancing operations or the maximum rate charged by commercial banks in the EC for a loan of similar risk and maturity, whichever is lower; (c) recover all costs of collection, including but not limited to reasonable attorneys’ fees; (d) withhold from Buyer any rebate payments; (e) suspend production, shipment, or delivery; modify or withdraw credit terms, including but not limited to requiring advance payment or guarantees, or other security; or terminate any program or other benefits; or (f) combine any of the above rights and remedies as may be permitted by applicable law. These remedies are in addition to all other remedies available at law. This section will survive expiration or any termination of the Agreement. Seller may re-evaluate Buyer’s credit standing at all times. Buyer may not set off any invoiced amount against sums that are due from Seller or any of Seller’s affiliates.

10. TAXES.

Seller’s pricing excludes all taxes (including but not limited to sales, use, excise, value-added, and other similar taxes), duties (including import and export duties), and charges (collectively “Taxes”). Buyer will pay all Taxes resulting from the Agreement or Seller’s performance under the Agreement, whether imposed, levied, collected, withheld, or assessed now or later. If Seller is required to impose, levy, collect, withhold, or assess any Taxes on any transaction under the Agreement, then in addition to the purchase price, Seller will invoice Buyer for Taxes 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, a direct pay permit. If any
Taxes are required to be withheld from amounts paid or payable to Seller under this Agreement, (i) the amount will be increased so that the amount Seller receives, net of the taxes withheld, is the amount Seller would have received had no tax been required to be withheld, (ii) Buyer will withhold the required amount of Taxes and pay such Taxes on behalf of Seller to the relevant taxing authority in accordance with applicable law, and (iii) Seller will forward proof of such withholding sufficient to establish the withholding amount and recipient to Buyer within sixty (60) days of payment. In no event will Seller be entitled to receive any Taxes paid or payable by Buyer. 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 airfreight.

12. BUYER CAUSED DELAY. Seller is not liable for any delays or increased costs caused by delays in obtaining required products or services from Buyer or Buyer-designated suppliers. If Buyer or Buyer-designated supplier causes any delay, 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 not due to the conduct 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 Seller’s non-performing party’s reasonable control and may include but is not limited to: (a) death of, injury to, or incapacity of any individual; (b) strikes, lockouts, embargoes, blockages, seizure, or freeze of assets; (c) acts of God, including fires, earthquakes, floods, tropical storms, hurricanes, tornados, severe weather conditions, or any other act of God; (d) epidemics, pandemics, quarantine; regional mediocrity; (e) shortages or inability to obtain materials or components; (f) labor strikes or lockouts; (g) riots, strife, insurrection, civil disobedience, landowner disturbances, armed conflict, terrorism or war, declared or not (or impending threat of any of the foregoing), if such thing significantly retards or prejudices the performance of the contract or is caused to delay due to non-performance by Buyer or Buyer-designated supplier; and (h) inability or refusal by Buyer’s directed third party to provide Seller services, parts, manuals, or other information necessary to the Product 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 fails to produce or purchase costs for the Product (including without limitation costs of energy, equipment, labor, regulation, transportation, raw material, feedstocks, or Product) increases by more than five percent (5%) over Seller’s production or purchase costs for the Product on the date of entering into this Agreement, then Buyer may, by written notice to Buyer of such increased costs, 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. Seller may, at its sole discretion, suspend or terminate this Agreement and any or all unperformed orders and agreements immediately upon notice to Buyer upon the occurrence of any of the following events: (i) Buyer fails to perform or breaches any of its obligations and covenants under this Agreement, and such default continues for more than thirty (30) days after receipt of written notice specifying the failure to perform or breach; (ii) Buyer fails due to take any payment required to be made under this Agreement when due, and fails to remedy the breach within three (3) calendar days after receipt of written notice of non-payment; (iii) Buyer attempts to assign this Agreement or any rights hereunder without Seller’s prior written consent; (iv) Buyer ceases to function as a going concern, required to return or destroy any information, products, or documents against exporting or its inability to meet its obligations as they mature, or a receiver is appointed for Buyer’s assets, or if any proceedings relating to Buyer under any bankruptcy or insolvency law is brought by or against Buyer, or Buyer makes an assignment for the benefit of creditors; (v) there is a transfer of substantially all of the assets of Buyer, or a majority interest in the stock of, Buyer, or the merger or consolidation of Buyer with one or more parties; (vi) dissolution of Buyer or death of any principal owner of Buyer (vii) any officer, principal, stockholder, manager, 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 on its part is detrimental or harmful to the good name, good will, and reputation of Seller or the Products; or (ix) if the Buyer is a distributor or other reseller, the Buyer sells or transfers for sale or resale any Product in contravention of the provision of the Agreement authorizing Buyer to act as distributor or other reseller; or (x) any breach of section 16 or section 18 of this Agreement. Termination does not affect any other remedies that Buyer is entitled to under this Agreement or in law.

16. COMPLIANCE WITH APPLICABLE LAW. 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 to be performed by Buyer, or the facilities and other assets used by Buyer in performing its obligations under the Agreement. Without limiting the foregoing, Buyer is responsible for the recycling and disposal of Product as required by WEEE Directive 2012/19/EU or similar directives. Buyer or 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.

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 as an inducement or reward for commercial advantage or benefit; (ii) illegal activities or aiding or abetting any violation of applicable law; (iii) the design, development, production, use or stockpiling of nuclear, chemical or biological weapons or missiles, nor use the Products or Software in any facility which engages in activities related to such weapons or missiles. In addition, the Products or Software may not be used in connection with any activity involving nuclear fission or fusion, or any use or handling of any nuclear material until Buyer, at no expense to the Seller, has insurance coverage, indemnities, and waivers of liability, recourse and subrogation, acceptable to the Seller and adequate in the Seller’s opinion to protect the Seller against any type of liability.

Buyer will retain documentation evidencing compliance with Export/Import Control Laws. Buyer, its subsidiaries, and any and all officers, employees, and agents shall not directly or indirectly, sell, lease, transfer, assign, convey, deliver, or otherwise transfer, or attempt to transfer, any Product or Software to any Restricted Person or any country to which such transfer is prohibited by U.S. or other applicable laws. Buyer will not cause or permit the sale or transfer of any Product or Software or any “Restricted Person” to any country to which such transfer is prohibited by U.S. or other applicable laws. Without the prior written consent of the other party, Buyer may not disclose any technical information to the other party that is subject to Export/Import Control Laws. Buyer will not transfer any Product or Software to any country to which such transfer is prohibited by U.S. or other applicable laws.

18. ANTI-CORRUPTION LAWS AND CODE OF BUSINESS CONDUCT. Buyer certifies that Buyer has read, understands, and agrees to abide by the provisions of the Honeywell Code of Business Conduct (the “Code of Conduct”) which is available at: https://www.honeywell.com/how-we-are/integrity-and-compliance. In addition, 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, solicit, pay, 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-controlled entity, or public international organization; (B) any political party or political official; (C) any candidate for public office; (D) any officer, director, shareholder holding more than ten percent (10%) of the issued shares, employee, or agent of any private customer; or

(ii) any Person that the Buyer knows or has reason to know that all or a portion of such money or 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, to its best knowledge, 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, in the event after execution of this Agreement Buyer becomes, or proposes to become, a Restricted Person, Buyer shall immediately notify in writing Seller and Seller shall have the unilateral right, without provision for any compensation whatsoever, to modify or terminate this Agreement if necessary to ensure compliance with all applicable laws, regulations or policies of the United States or in the jurisdiction(s) where the Buyer intends to do business.

(d) That it will maintain accurate books and records in accordance with it Internal procedures along with supporting documentation. Seller, at its expense, may audit Buyer on a continuing basis to determine Buyer’s compliance with the FCPA and other Anti-Corruption Law and with the export and import control laws and regulations
VERSIGN EFFECTIVE ON 1ST MAY 2022

applicable by virtue of the Agreement. Buyer will be advised of such audit not less than thirty (30) days in advance. Seller shall prepare for and assist in any such audit.

(e) That no Restricted Person has a right to share either directly or indirectly in the commissions of any contract obtained pursuant to this Agreement or in any commission payable hereunder.

(f) That it has not employed or compensated and will not employ or compensate any current or former employees or officials of the government of the US or any other jurisdiction where the Buyer intends to do business if such employment or compensation violates any law, regulation, or policy in the US or the other jurisdiction where the Buyer intends to do business.

(g) That it shall immediately notify Seller and cease representation activities with regard to the sale in question if Buyer knows or has a reasonable suspicion of a violation of the FCPA, other Anti-Corruption Law, the Code of Conduct or Seller’s policies.

(h) That, upon request by Seller, it shall attest to the accuracy and truthfulness of the foregoing representations and warranties, and shall so attest annually and at the time of each renewal, if any, of the Agreement.

(i) That, in the event of any investigation by Seller or any governmental entity with respect to any violation of the FCPA, any Anti-Corruption Law, the Code of Conduct, or Seller’s policies, Buyer agrees to cooperate with Seller in the course of any such investigation or reasonably anticipated investigation.

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 which is incapable of accurate estimation. As a result, Buyer agrees to defend, indemnify, and hold harmless Seller for all claims, demands, causes of action, damages, losses, fines, penalties, or costs, including attorney’s fees, that Seller may suffer by reason of the violation by Buyer of the FCPA or other Anti-Corruption Law, or investigation of Seller or Buyer by a governmental agency for such a violation, and further agrees to refund to Seller any funds paid in contravention of such laws.

If Buyer learns of any violations of the above anticorruption provisions in connection with the performance of this Agreement, it will immediately advise Honeywell’s (a) Chief Compliance Officer (b) any member of the Integrity and Compliance Department and (c) the Chief Financial Officer or its designee. Buyer agrees to cooperate fully in any Seller investigation to determine whether a violation of the provisions stated herein has occurred. Buyer agrees to provide all the requested documents and make employees available for interviews. Buyer agrees that Seller may disclose information relating to probable violation of these anticorruption provisions to relevant government agencies.

If Buyer subcontracts any of the services to a subcontractor, subagent, or any other third party, Buyer will notify, in writing, the subcontractors of these anticorruption provisions and obtain a written certification of compliance. Where a written agreement exists between Buyer and the subcontractor, Buyer will include similar anticorruption representations as material terms of that agreement. Failure by the Buyer, or its subcontractors if allowed under this Agreement, to so comply with these anticorruption representations will be considered a material breach of this Agreement and will be grounds for immediate termination, without prior notice.

Distributor must successfully complete the online anti-corruption training module within 30 days from the date the course is assigned by Honeywell; or alternatively furnish a valid TRACE certificate to confirm its completion of a similar anti-corruption course provided by TRACE.

19. DATA COLLECTION, TRANSMISSION AND USE.

Buyer understands that certain Products may include software to collect information about how, and under what conditions, the Product is used and functions, including, without limitation, information describing use of operating systems such as touch panel, buttons, and voice/audio input; power status and management, such as battery levels; device location; ambient conditions such as pressure, temperature, and/or humidity levels. The information collected by such software may be used by Seller for purposes including, but not limited to: assistance with Product’s design and development, analytics to improve functionality or optimize customer usage, development, and quality control/development of such Products. Buyer acknowledges that personal data collected by the device may be stored with third parties and shared with Honeywell affiliates located outside of the European Union, as in the US, India or Mexico. No end-user identifiable data will be provided to any third party. Buyer shall notify all resellers that Seller is collecting this information and shall contractually bind all resellers to notify their end-user customers that such information may be collected and used by Seller as described above.

20. CONFIDENTIALITY AND PERSONAL DATA.

The parties may exchange confidential information during the performance or fulfillment of the Agreement. All confidential information shall remain the property of the disclosing party and shall be kept confidential by the receiving party for a period of three (3) years following the date of disclosure. 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 recipient. Each party shall retain ownership of its confidential information, including without limitation all rights in patents, copyrights, trademarks, trade secrets and other intellectual property.

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 confidential information to its affiliated companies, employees, officers, consultants, agents, and contractors.

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 the Buyer, the end user or the data protection authority related to data processing by the Seller will be responded promptly and fully. Shall Buyer require additional documentation and standard provided to Buyers, Seller will provide it at Buyer’s costs. Shall the Buyer move the burden on handling data access rights to Seller, Seller will ensure these are being handled properly and at Seller costs. Buyer has the right to audit Seller’s compliance with data privacy laws and confidentiality standards. Such audit can be executed only (i) after at least thirty (30) days prior notice; (ii) occur during normal working hours and (ii) shall not interfere with regular course of business. Any costs related to the audit will be born only by the Buyer. Upon termination of this Agreement, Seller shall erase or anonymize the personal data of the Buyer or the end user, as its discretion.

21. WARRANTY TERMS.

Subject to the provisions of this section 21 and the “Limitation of Liability” provision of the Agreement (section 25), with respect to each Product sold by Seller hereunder (excluding software or software components), Seller warrants that, for a period of twelve (12) months from the time of shipment from Honeywell facility or a period of thirty (30) days after the receipt of the Product, whichever is later, (a) such Product shall be free from faulty workmanship and defective materials. (b) the software and software components, including any documentation designated by Seller for use with such software or software components, are provided “AS IS” and with all faults. The entire risk as to satisfactory quality, performance, accuracy, and effort for such software is with the Buyer. Seller makes no warranties implied or actual regarding any of software or software components or any of its accompanying documentation. The warranties provided by Seller in this section 21 are the only warranties provided by Seller with respect to the Products sold hereunder, and may be modified or amended only by a written instrument signed by Seller and accepted by Buyer. The warranties do not apply if, in the sole opinion of Seller, the Product has been damaged by accident, misuse, neglect, or improper shipping or handling. This warranty is valid only if the Product has not been tampered with or serviced by any party not authorized by Seller as a repair facility. The Buyer’s remedies and Seller’s aggregate liability with respect to the warrants provided by Seller in this section 21 are set forth in and are limited by this section 21 and the “Limitation of Liability” provision of the Agreement (section 25).

(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 by Seller. Upon receipt of any such Product during the applicable Warranty Period, Seller shall, at its expense, (1) in Seller’s sole discretion, repair or replace such Product and return it to its original location, (2) if a Product is returned to it to its original location. Seller’s obligations hereunder shall arise only if Seller’s examination of the Product in question discloses to Seller that the Product is actually and was caused by an improper installation, testing, or use; any failure to properly maintain or service the Product, (3) any Product that is incapable of proper air conditioning, or humidity control; or any act of God, accident, fire or other hazard. Repair or replacement of a Product (or any part thereof) does not extend the Warranty Period for such Product. Products which have been repaired or replaced during the Warranty Period are warranted for the remainder of the unexpired portion of the Warranty Period.

(b) Services Warranty. Services 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 or re-perform defective services or refund fees paid for the services, at Seller’s sole election, if Buyer notifies Seller in writing of defective services within the warranty period. All services corrected or re-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 only.

(c) OTHER LIMITATIONS. THE EXPRESS WARRANTIES OF SELLER STATED IN SECTION 21 DO NOT APPLY TO PRODUCTS NOT MANUFACTURED BY SELLER, SOFTWARE, CONSUMABLE ITEMS (E.G. PAPER AND RIBBONS), SPARE PARTS, OR SERVICES, AND DO NOT APPLY TO PRODUCTS, OR COMPONENTS THEREOF (INCLUDING WITHOUT LIMITATION ANY SOFTWARE COMPONENT), WHICH HAVE BEEN ALTERED, MODIFIED, REPAIRED, OR SERVICED IN ANY RESPECT EXCEPT BY SELLER OR ITS REPRESENTATIVES. IN ADDITION, THE EXPRESS WARRANTIES OF SELLER STATED IN SECTION 21 DO NOT APPLY TO ANY SOFTWARE COMPONENT OF A PRODUCT WHICH IS SELLER’S LICENSED SUBJECT TO A SEPARATE LICENSE AGREEMENT OR OTHER DOCUMENT RELATING TO SUCH SOFTWARE COMPONENT (INCLUDING WITHOUT LIMITATION A “SHRINK WRAP” LICENSE AGREEMENT). THE WARRANTIES, IF ANY, APPLICABLE TO ANY SUCH SOFTWARE COMPONENT SHALL BE SOLELY AS STATED IN SUCH OTHER LICENSE.
22. TECHNICAL ADVICE
Any recommendation or assistance provided by Seller concerning the use, design, application, or operation of the Products 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 will defend any suit against the Buyer based on a claim that the Product as delivered by Seller directly infringes a valid US 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. 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 be liable for any defense fees or costs incurred by Buyer. Buyer shall not incur any expenses 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.

Seller will have no obligation or liability to the extent the claim arises as a result of: (a) Buyer’s designs, drawings, or specifications; (b) Product’s use other than for their original purpose; (c) combining any Product furnished under the Agreement with any article not furnished by Seller; (d) use of other than the latest version of the Product if the Product is software or, if not, of software provided with the Product released by Seller; or (e) any alteration, customization, or other modification of the Product other than by Seller or requested by Buyer. Further, Buyer agrees to indemnify and defend Seller to the same extent and subject to the same restrictions as set forth above in Seller’s obligations to Buyer for any suit against Seller based upon a claim of infringement resulting from (a), (b), (c), (d), or (e) of the preceding paragraph.

If a claim of infringement is made or if Seller believes that such a claim is likely, Seller may, at its option, and at its expense, procure for Buyer the right to continue using the Product, replace or modify the Product so that it becomes non-infringing; or accept return of the Product and terminate the Agreement. In either case, Buyer will pay to Seller for the purchase price or license fee paid for the Product, less a reasonable depreciation for use, damage, and obsolescence. Further, Seller may cease shipping Products it believes may be subject to a claim of infringement without being in breach of the Agreement. Any liability of Seller under this provision is subject to the “Limitation of Liability” provision of the Agreement.

THIS PROVISION STATES THE PARTIES’ ENTIRE LIABILITY, SOLE RECOUPMENT, 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.

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 AND UNLESS SPECIFIC LIABILITY OR OBLIGATION FOR DAMAGE CANNOT BE LAWFULLY EXCLUDED OR LIMITED UNDER THE APPLICABLE LAW: (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 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 DAMAGES AND NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY; THE PARTIES EXPRESSLY AGREE THAT IF THE PRODUCTS ARE NOT CONSIDERED TO BE CONSUMER GOODS AND (II) CUSTOMER DOES NOT QUALIFY AS A CONSUMER, THE LIMITATIONS OF LIABILITY CONTAINED IN THE

with the Agreement or Buyer’s failure to maintain reasonable and appropriate security measures. Buyer is responsible for all such damages. Where Buyer is not the end-user of the Product, Buyer represents and warrants that it will require its customers to comply with the above Cybersecurity Event provisions.
26. SOFTWARE LICENSE. “Licensed Software” means software, including all related updates, changes, revisions and documentation, if any, that Buyer is entitled to use under this Agreement and which is not subject to a separate software license between the parties. License, Subject to Buyer’s compliance with the terms of this Agreement, Seller grants to Buyer and Buyer accepts a nontransferable, nonexclusive license, without the right to sublicense, to use the Licensed Software in the ordinary and normal operation of the Product on which it is installed de overdraagbaarheid uit.

If, for reasons other than a "force majeure" event, Seller should default or delay or not deliver Product, Buyer's sole remedy is in the event any provision or portion of this Agreement 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 or portion thereof, a provision or portion of a provision as similar in terms as may be legal, valid, and enforceable shall be added hereinto.

29. 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 or portion thereof, a provision or portion of a provision as similar in terms as may be legal, valid, and enforceable shall be added hereinto.

30. 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.

31. APPLICABLE LAW AND FORUM. The Agreement will be governed by and interpreted in accordance with the laws of the Netherlands, without regard to its conflicts of law rules. 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 Court of Amsterdam, the Netherlands (rechtbank Amsterdam).

32. 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.

33. 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 Buyer as an exclusive purchaser of the Products in any respect.

34. 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.

35. 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 Comprehensive General Liability policy with a single limit of EUR 1,000,000 per occurrence/bodily injury and EUR 2,000,000 in the aggregate for bodily injury and property damage.

Buyer will 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 required under this Agreement shall be placed with insurance carrier(s) that are rated a minimum “A-“ 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.

36. 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. Subject to the above, this provision excludes the transferability within the meaning of article 3:83(2) Dutch Civil Code (aluit de overdraagbaarheid uit), 2 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.

37. 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.

38. CHOICE OF LANGUAGE. The language of contracts and correspondence will be English. In the event that this Agreement is translated into other languages, the English version alone will be authoritative and will prevail over the other language versions.