

ELSTER WATER METERING LIMITED

TERMS AND CONDITIONS FOR SALE OF PRODUCTS AND/OR SERVICES

1. DEFINITIONS AND INTERPRETATION

1.1 The following definitions and rules of interpretation apply in these terms and conditions ("**Conditions**"):

"Affiliates": any legal entity that controls, is controlled by, or is under common control with, another legal entity. An entity is deemed to "control" another if it owns directly or indirectly a sufficient voting interest to elect a majority of the directors or managing authority or to otherwise direct the affairs or management of the other entity.

"Company": Elster Water Metering Limited (Company Registration number: 08624958) a member of Honeywell International Inc. group of companies.

"Contract": The agreement between the Company and the Purchaser consisting of the Purchase Order, Order Acknowledgement, any special terms and conditions agreed to by both parties in writing, these Conditions, the Specification, the Warranty and any other Documents specified in the Purchase Order.

"Document": Any tangible representation or embodiment of information including but not limited to a document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record in any form.

"Elster Products": All products manufactured by the Company (or an affiliated company) and/or designed or developed to the Company's Specification.

"Installation Instructions, User and Maintenance Manual": The information whether provided as a Document, or otherwise, relevant to the installation, operation and/or maintenance of the Product.

"Intellectual Property": All rights in patents, inventions, utility models, copyright, discoveries, improvements, concepts, models, drawings, secret formulae and processes, trademarks, service marks, trade, business and domain names, trade dress or get-up, goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential or proprietary information (including know-how and trade secrets), all algorithms, insights, information, and inventions derived from the Purchaser Data and any other similar or equivalent rights or forms of protection of a similar nature in any part of the world, in each case whether registered or unregistered and including all rights to apply for, applications for and renewals or extensions of such rights.

"Licence Agreement": Any licence agreement relating to the use of Software.

"Order Acknowledgement": The Company's written acceptance of the Purchase Order.

"Purchase Order": Any written request for the Products and/or Services received by the Company from the Purchaser.

"Purchaser": The person, firm or company who purchases the Products and/or Services from the Company.

"Purchaser Data": all information that is collected, generated, processed or transmitted by or through any Software, Service or Product but excluding any information relating to an identified or identifiable living person or persons processed in the course of the performance of the Services and/or the Contract.

"Products": Any products (including Elster Products) agreed in the Contract to be supplied to the Purchaser by the Company (including any part(s) of them).

"Services": Any services (including any software-as-a-service) provided to the Purchaser by or on behalf of the Company.

"Software": Any software (excluding any underlying software as part of the Services) comprised within the Product and/or Services, owned by the Company or a third party and provided to the Purchaser by the Company.

"Specification": Any plans, drawings, data, patterns, samples, raw materials, jigs, tools, fixtures, materials, information in respect of the Products and/or Services as referenced in the Purchase Order.

"Standard Warranty": Has the meaning given to that term in Condition 13.4.

"Warranty": The warranties provided by the Company in respect of any Product and/or Services as contained in Condition 13, including the Standard Warranty.

1.2 Any reference in these Conditions to any provision of a statute shall be construed

as a reference to that provision as amended, re-enacted or extended at the relevant time.

1.3 A reference to one gender includes a reference to the other gender.

1.4 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.5 Words in the singular shall include the plural and vice versa.

1.6 Where the words "**include(s)**", "**including**", or "**in particular**" are used in these Conditions, they are deemed to have the words "*without limitation*" following them and where the context permits, the words "**other**" and "**otherwise**" are illustrative and shall not limit the sense of the words preceding them.

1.7 Any obligation in the Contract on a person not to do something includes an obligation not to agree, allow, permit or acquiesce in that thing being done.

1.8 The headings in these Conditions are for convenience only and shall not affect their interpretation.

1.9 In the event of any discrepancy or conflict between any Documents included in the Contract, the following order of precedence shall apply: (i) the Order Acknowledgement; (ii) special terms and conditions agreed to by both parties in writing; (iii) these Conditions; (iv) the Purchase Order; (v) the Specification; (vi) the Warranty and (vii) all other Documents that form part of the Contract.

2. BASIS OF THE SALE AND PURCHASE ORDERS

2.1 The placing of a Purchase Order is subject to these following Conditions which replace and supersede any terms and conditions proposed by the Purchaser and shall not be varied except with the written consent of the Company and any such variation shall only apply in respect of the particular Purchase Order involved.

2.2 Errors or omissions in the Purchase Order may be corrected by the Company.

2.3 All Purchase Orders are subject to written acceptance by the Company's authorised representatives.

2.4 No binding contract shall be deemed to have been effected by the acceptance on the part of the Purchaser of a quotation or offer made by the Company until such contract shall have been confirmed by an Order Acknowledgement.

2.5 The Company's employees or agents are not authorised to make any representations concerning the Products or Services unless confirmed by the Company in writing. In entering into the Contract the Purchaser acknowledges that it does not rely on and waives any claim for breach of any such representations which are not so confirmed.

2.6 Any advice or recommendation given by the Company or its employees or agents to the Purchaser or its employees or agents as to the storage, application or use of the Products which is not confirmed in writing by the Company is followed or acted upon entirely at the Purchaser's own risk, and accordingly the Company shall not be liable for any such advice or recommendation which is not confirmed by the Company in writing.

3. DELIVERY

3.1 Any dates and/or times quoted for the provision of the Products and/or Services are approximate only and the Company shall not be liable for any delay in delivery howsoever caused. The Products and/or Services may be delivered by the Company in advance of the quoted delivery date upon giving prior notice to the Purchaser.

3.2 Delivery shall be at the Company's place of business or in accordance with the delivery details set out in the Purchase Order and confirmed in writing by the Company.

3.3 The Purchaser, in the case of damaged Products or shortage in the provision of Services, shall give written notice to the Company of the damage or shortage within three (3) days after delivery of the damaged Products or provision of the Services, and in the case of non-delivery of the Products, shall, if the Purchaser had been advised of the despatch of the Products, give notice to the Company of the non-delivery of the Products within ten (10) days after the receipt of such advice that the

Products were entrusted for delivery to a carrier.

- 3.4 To the extent permitted by law, the liability of the Company shall be limited to the replacement or repair within a reasonable time of the Products damaged or not delivered, or re-performance in the case of Services; provided always that, to the extent permitted by law, the Company shall not be responsible for damage to, or non-delivery or shortage of the Products and/or Services, if by reason of the failure of the Purchaser to give notice of damage, non-delivery or shortage, the Company shall be prevented from recovering compensation in respect of such loss or damage from a third party. To the extent permitted by law, if the Purchaser does not notify the Company in accordance with Conditions 3.3 and 3.4, (i) the Purchaser shall not be entitled to reject the Products and/or Services; (ii) the Company shall have no liability for such damage, non-delivery or shortage, and (iii) the Purchaser shall be bound to pay the price as if the Products and/or Services had been delivered in accordance with the Contract.
- 3.5 If for any reason the Purchaser fails to take delivery of the Products at the time when the Products are due and ready for delivery, the Company shall be entitled to store the Products until their actual delivery and the Purchaser shall be liable to the Company for the costs (including insurance) of storage or the Company may sell the Products at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Purchaser for the excess over the price under the Contract or charge the Purchaser for any shortfall below the price under the Contract.
- 3.6 Where the Products and/or Services are to be delivered in instalments, each delivery constitutes a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Purchaser to cancel any other instalment.

4. PAYMENT

- 4.1 Subject to any special terms agreed in writing between the Purchaser and the Company, the Company is entitled to invoice the Purchaser for the price at any time after the Company has notified the Purchaser that the Products are ready for collection or (as the case may be) the Company has tendered delivery of the Products and/or performance of the Services.
- 4.2 The Purchaser shall pay the price of the Products and/or Services in sterling (in full without any deduction or set-off) within thirty (30) days of the date of the Company's invoice and the Company is entitled to recover the price notwithstanding that delivery of the Products or performance of the Services may not have taken place and in the case of Products, that title in the Products has not passed to the Purchaser. The time of payment of the price is of the essence of the Contract. Receipts for payment will be issued only upon request by the Purchaser.
- 4.3 If the Purchaser fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Company, the Company may:
- 4.3.1 terminate the Contract in accordance with Condition 19;
- 4.3.2 suspend any further deliveries of Products and/or Services to the Purchaser;
- 4.3.3 apply any payment made by the Purchaser to such of the Products and/or Services as the Company may think fit (notwithstanding any purported appropriation by the Purchaser);
- 4.3.4 stop any Products in transit; and/or
- 4.3.5 charge the Purchaser interest (both before and after any judgment) on the amount unpaid, at the rate of four per cent (4%) per annum above Barclays Bank Plc's base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

5. PRICE

- 5.1 The price of the Products and/or Services is the Company's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in the Company's published price list current at the date of acceptance of the Purchase Order. Where Products are supplied for export from the United Kingdom, the Company's published export price list shall apply. All prices quoted are valid for thirty (30) days only or until earlier acceptance by the Purchaser, but the Company may withdraw or vary a quotation at any time.
- 5.2 The Company reserves the right, by giving notice to the Purchaser at any time before Elster Water Metering Limited – Standard Terms and Conditions (Sales) Mar 2017

delivery, to increase the price of the Products and/or Services to reflect any increase in the cost to the Company which is due to any factor beyond the control of the Company (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of export/import duties and/or tariffs, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or Specification for the Products and/or Services which is requested by the Purchaser, or any delay caused by any instructions of the Purchaser or failure of the Purchaser to give the Company adequate information or instructions.

- 5.3 Except as otherwise stated under the terms of any quotation given by the Company or in any price list of the Company, and unless otherwise agreed in writing between the Purchaser and the Company, all prices are given by the Company on an ex works (INCOTERMS 2010) basis.
- 5.4 The price is exclusive of any applicable tax (including but not limited to VAT) for which the Purchaser is additionally liable to the Company.

6. SPECIFICATION

- 6.1 Unless otherwise specified, Products which are the subject of the Contract shall comply with the Company's Specification. In the event of the Purchaser requiring any modification of the Specification the Company reserves the right to amend the price and delivery date.
- 6.2 The Company reserves the right to make any changes in the Specification of the Products and/or Services which are required to conform to any applicable safety or other statutory requirements or which do not affect their quality or performance.
- 6.3 The Purchaser is responsible to the Company for ensuring the accuracy of the terms of any Purchase Order (including any applicable Specification) submitted by the Purchaser, and for giving the Company any necessary information relating to the Products and/or Services within a sufficient time to enable the Company to perform the Contract in accordance with its terms.

7. SPECIFICATION OF NON-STANDARD PRODUCTS

- 7.1 All descriptive and forwarding specifications, drawings and particulars of weights and dimensions submitted by the Company in quotations, bids or tenders are approximate only, and the descriptions and illustrations contained in catalogues, price lists and other advertisement matter issued by the Company are intended merely to present a general idea of the Products described therein, and none of these shall form part of the Contract.
- 7.2 To the extent permitted by law, Products which are specially manufactured or in special finish are not returnable save where the Company accepts such Products are defective under these Conditions.

8. CANCELLATION OF ORDERS

No Purchase Order which has been accepted by the Company may be cancelled by the Purchaser except with the agreement in writing of the Company and on terms that the Purchaser shall indemnify the Company in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, liabilities, charges and expenses incurred by the Company as a result of cancellation.

9. RISK

- 9.1 Risk of damage to or loss of the Products shall pass to the Purchaser:
- 9.1.1 in the case of Products to be delivered at the Company's premises, at the time when the Company notifies the Purchaser that the Products are available for collection; or
- 9.1.2 in the case of Products to be delivered otherwise than at the Company's premises, at the time of delivery or, if the Purchaser wrongfully fails to take delivery of the Products, the time when the Company has tendered delivery of the Products.

10. TITLE

- 10.1 Notwithstanding delivery and the passing of risk in the Products, or any other provision of these Conditions, title in the Products shall not pass to the Purchaser

until the Company has received in full (in cash or cleared funds) all sums due to it in respect of the Products and all other Products agreed to be sold by the Company to the Purchaser for which payment is then due.

- 10.2 Until title in the Products passes to the Purchaser, the Purchaser shall hold the Products in a fiduciary capacity and shall (i) keep the Products separate from those of the Purchaser and third parties and (ii) properly stored, protected, insured and identified as the Company's property.
- 10.3 If the Purchaser re-sells or uses the Products in which title remains with the Company it shall be liable to account to the Company for the proceeds of sale or otherwise of such Products, whether tangible or intangible, including insurance proceeds, and shall keep all such proceeds separate from any monies or property of the Purchaser and third parties and, in the case of tangible proceeds, properly stored, protected and insured.
- 10.4 Until title in the Products passes to the Purchaser and provided that the Products are still in existence and have not been re-sold, the Company shall be entitled at any time to require the Purchaser to deliver up the Products to the Company. The Purchaser grants the Company, its agents and employees an irrevocable licence to enter upon any premises where the Products are stored in order to inspect the Products or to recover them.
- 10.5 The Purchaser shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Products which remain the property of the Company, but if the Purchaser does so all monies owing by the Purchaser to the Company shall (without prejudice to any right or remedy of the Company) forthwith become due and payable.

11. TESTS

The Products are carefully inspected and, where practicable, submitted to standard tests before despatch. If special tests or tests in the presence of the Purchaser or its representative are required, these tests, unless otherwise agreed must be made at the Company's premises and will be charged for separately.

12. PERFORMANCE

Any performance figures given by the Company are based upon experience and are such as the Company expects to obtain on test prior to despatch from the Company's premises. The Company will however, accept no liability if those figures are not achieved unless specifically guaranteed by the Company in writing.

13. WARRANTIES AND EXCLUSIONS

- 13.1 Products are supplied subject to the following warranty unless otherwise specified in writing by the Company: Products shall be delivered free from defects in design, materials and workmanship if installed, operated, maintained and used in accordance with the Company's published guidelines which include, but are not limited to information contained in these Conditions, the Specification(s) and Installation Instructions, User and Maintenance Manual(s).
- 13.2 Services are supplied subject to the following warranty unless otherwise specified in writing by the Company: Services shall be performed in a competent, diligent manner and shall correspond with their relevant Specification or any mutually agreed specification.
- 13.3 Software supplied and licensed by the Company is subject to the following warranties unless otherwise specified in writing by the Company: Software shall substantially conform to and be capable of functioning in all material respects in accordance with the relevant Specification for a period of ninety (90) days after the date of shipment but the Company does not warrant that the Software shall be free of errors, or interruptions.
- 13.4 To the extent permitted by law, Condition 13.1, Condition 13.2, Condition 13.3 and the Company's standard warranty (a copy of which is available upon request but which Purchaser agrees is expressly incorporated in the Contract) ("**Standard Warranty**") are subject to the following exceptions:
- 13.4.1 the Company is under no liability in respect of any defect in the Products or non-conformity of the Software or Services arising from any Specification supplied by the Purchaser;
- 13.4.2 the Company is under no liability in respect of (a) consumable parts, such as

protective coatings that are designed to diminish over time, unless failure has occurred due to a defect in materials or workmanship; (b) cosmetic damage, including but not limited to scratches, dents and broken plastic on ports; (c) any failure, non-conformity, interference or defect arising from or caused by any particles in the water which affect their function outside the norms or standards generally accepted in the industry, or by aggressive water or environmental conditions (including submersion in contaminated ground water or foreign matter in the water or environment); (d) damage caused by use with another product; (e) damage caused by accident, abuse, vandalism, deliberate tampering, theft, mishandling, misapplication, misuse, fire, earthquake or other external cause; (f) improper installation and/or damage caused by operating the Product and/or Software outside these Conditions, the Company's Installation Instructions, User and Maintenance Manual and the Company's Specification; (g) damage caused by services (including but not limited to upgrades, maintenance, repairs and expansions) performed by anyone who is not a representative of the Company or authorised by the Company to undertake such work; (h) Products and/or Software which have been modified to alter functionality or capability without the written permission of the Company; (i) defects caused by normal wear and tear or otherwise due to normal aging of the Products; (j) negligent acts or omissions or malfeasance of the Purchaser or any third party; (k) damage to the Products and/or Software caused by the Purchaser or any third party or other conditions beyond the control of the Company; (l) where any serial number or security seals have been removed or defaced (in whole or part) from the Products and/or Software; (m) the performance of configurable data features that are factory programmed, radio transmission ranges and installation sites; (n) tampering or removal of the battery at any time during the life of battery powered Products (o) any Product that has been immersed in water above 30 degrees Celsius; or (p) any Product that has been immersed in water below 30 degrees Celsius to a depth in excess of 1.1m for a continuous period that exceeds 24 hours;

13.4.3 the Company is under no liability if any payments due and owing to the Company for the Products, Software and/or Services have not been paid by the Purchaser by the due date for payment; and

13.4.4 Conditions 13.1, 13.3 and the Standard Warranty do not extend to products, parts, materials, equipment or software not manufactured or produced by the Company, in respect of which the Purchaser shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer or supplier to the Company (which may be less than twelve (12) months), and only the remedies, if any, provided by the manufacturer or supplier to the Company will be allowed.

- 13.5 The Warranty for Products shall expire twelve (12) months from date of delivery. The Warranty for Software supplied and licensed by the Company shall expire ninety (90) days from date of delivery. The Warranty for Services shall expire thirty (30) days from date of completion of the Service (such respective periods being jointly referred to as the "**Warranty Period**"). The Warranty Period will not be extended or renewed or otherwise affected due to replacement of Products. No Company reseller, agent, or employee is authorised to make any extension to this Warranty Period.
- 13.6 If any Products, Software and/or Services are discovered after the date of delivery but within the Warranty Period to be defective or otherwise not in accordance with Conditions 13.1, 13.2 and 13.3 above, then the Company shall at its option and without additional charge to the Purchaser: (i) repair or replace the Products and/or Software; (ii) refund the price of the Products and/or Services (or a proportionate part of the price); and/or (iii) re-perform the Services, provided that the Purchaser shall notify the Company in writing within seven (7) days of becoming aware or when it ought to have been aware of the defect or non-conformity.
- 13.7 The cost for installation and/or removal of defective Products, including any shipping costs to a service centre designated by the Company shall be the responsibility of the Purchaser.

- 13.8 No claim of breach of Condition 13.1, Condition 13.2, Condition 13.3 or the Standard Warranty shall constitute a cause for cancellation of the Contract between the Company and the Purchaser.
- 13.9 Except as expressly provided in these Conditions, all warranties, representations, terms, conditions, remedies or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 14. LIMITATION OF LIABILITY**
- 14.1 Nothing in the Contract shall limit, restrict, modify or exclude the liability of the Company for (i) death or personal injury resulting from its negligence; or (ii) fraud or fraudulent misrepresentation; or (iii) any other type of liability the limitation or exclusion of which is prohibited by the applicable law.
- 14.2 Without prejudice to Condition 14.1 and to the maximum extent permitted by law, the Company shall not be liable, for any loss of actual or anticipated profits; loss of business; loss of revenue; loss of business opportunity; loss of contract; depletion of goodwill; loss of anticipated savings; loss and/or corruption of data or information; loss of use or pure economic loss, suffered or incurred by the Purchaser that arises under or in connection with these Conditions or the Contract, regardless of whether such loss is direct, indirect, special or consequential and howsoever caused.
- 14.3 Without prejudice to Condition 14.1 or Condition 14.2, the Company's total liability arising under or in connection with these Conditions, whether in contract, tort (including negligence), breach of statutory duty or otherwise, regardless of whether supply of the Products and/or Services is made in instalments or under separate Contracts, shall in no circumstances exceed the total Contract price.
- 14.4 Notwithstanding anything else stated in these Conditions, but without prejudice to Condition 14.1, any claim by Purchaser must be made within three (3) months of the event giving rise to the claim (and within the Warranty Period in respect of any claim made under Condition 13); otherwise the Company shall have no liability to the Purchaser whatsoever.
- 15. INDEMNITY**
- 15.1 In the event of any action for infringement or other proceedings being taken against the Company in respect of any Products manufactured by the Company or in the case of Services provided by the Company in accordance with the Purchaser's Specification, the Purchaser shall indemnify the Company against all losses, damages, liabilities, costs and expenses awarded against them or incurred by the Company in connection with or paid or agreed to be paid by the Company in settlement of any claim for infringement of any patent, copyright, design, trademark or other industrial or Intellectual Property of any other person, as well as the Company's costs (including reasonable legal fees) incurred in defending such action or proceeding, or any other action, or proceedings which result from the Company's use of the Purchaser's specification.
- 15.2 The Company shall indemnify the Purchaser against any fines or penalties imposed by a supervisory authority competent under the relevant privacy or data protection laws applicable to the Purchaser; and/or any amounts payable under any final judgement, court order or settlement agreed by the Company in relation to any claims by a data subject whose personal data is processed by the Company under the Contract, in each case, solely to the extent that the relevant fine, penalty or claim resulted directly from a material breach by the Company of its obligations under Condition 16.8, and subject always to the remaining provisions of this Condition:
- 15.2.1 The Purchaser shall notify the Company (in writing) of any of the circumstances referred to in Condition 16.8 immediately upon becoming aware of them (and giving reasonable details of the alleged breach by the Company of its obligations under the Condition 16.8).
- 15.2.2 If the Purchaser intends to make any claim under the indemnity in Condition 15.2, it shall: a) not make any admission of liability or agree to any settlement or compromise without the prior written consent of the Company; b) promptly provide the Company with all information regarding any applicable enforcement action or data subject claim as is reasonably requested by the Company from time to time; c) take reasonable account of any comments or proposals made by the Company in respect of such enforcement action or data subject claim; and d) take all reasonable steps to mitigate the fines or penalties payable and any damages or other costs relating to any relevant data subject claim.
- 15.2.3 The indemnity under Condition 15.2 shall not apply to the extent that any enforcement action or data subject claim arises from a) any breach by the Purchaser (or any other person, including any Affiliate of the Purchaser) of any of its obligations under the Contract or applicable law (including the relevant privacy or data protection laws); or b) the Company complying with any instructions of the Purchaser including regarding the processing of personal data under the Contract.
- 15.2.4 The indemnity in Condition 15.2 is subject to the limitations and exclusions of liability including those set out in Condition 14.
- 15.2.5 This Condition 15.2 states the Purchaser's sole and exclusive remedy in respect of any breach by the Company of its obligations under Condition 16.8.
- 16. SOFTWARE, INTELLECTUAL PROPERTY AND DATA PROTECTION**
- 16.1 If any Product and/or Service is comprised of Software, the Company, subject to these Conditions, grants to the Purchaser a non-exclusive, non-transferable licence to make use of the Software and/or supplied Intellectual Property in object code only solely for the purposes of using or operating the Products or receiving the Services, or allowing its customers to do so where the Purchaser is a distributor of the Company. In respect of any third party Intellectual Property and/or Software, such shall be supplied on the terms of an accompanying Licence Agreement. Nothing herein shall be construed to grant any rights or license to use any Software or other Intellectual Property in any manner or for any purpose not expressly permitted by such Licence Agreement.
- 16.2 The Purchaser grants its consent to the Company to collect, process and use Purchaser Data for the performance of the Contract as well as to improve and develop products and services, anonymise and aggregate general statistics and develop reports, perform data analysis, and develop anonymized and aggregated reports and analysis about the foregoing for current and future uses by the Company and/or its Affiliates. All algorithms, insights, information, and inventions derived from the Purchaser Data will be owned by the Company and considered the Intellectual Property of the Company.
- 16.3 The Company shall defend the Purchaser against any claim that the Software or other Intellectual Property owned by the Company infringes any United Kingdom patent, copyright, database right or right of confidentiality effective as of the date of the Contract, and shall indemnify the Purchaser for any amounts awarded against the Purchaser in judgment or settlement of such claims, provided that:
- 16.3.1 the Company is given immediate written notice of any such claim;
- 16.3.2 the Purchaser provides reasonable co-operation at its cost to the Company in the defence of and settlement of such claim, at the Company's expense;
- 16.3.3 the Company is given sole authority to defend or settle the claim; and
- 16.3.4 the Purchaser makes no admission of liability or attempt to settle such claim without the Company's prior written agreement.
- 16.4 In the defence or settlement of a claim under Condition 16.3, the Company may at its sole discretion (i) obtain for the Purchaser the right to continue using the Software or other Intellectual Property, (ii) replace or modify the Software or other Intellectual Property so that it becomes non-infringing or, (iii) if such remedies are not reasonably available, terminate the Contract and refund any monies paid in respect of the infringing Product and/or Service. The Company shall have no liability if the alleged infringement is based on:
- 16.4.1 a modification of or change to the Software or other Intellectual Property made by anyone other than the Company; or
- 16.4.2 the Purchaser's use of the Software or other Intellectual Property in a manner contrary to the Contract and/or any instructions given to the Purchaser by the Company; or
- 16.4.3 the Purchaser's use of the Software or other Intellectual Property is after notice of the alleged or actual infringement from the Company or any appropriate authority.
- 16.5 The foregoing states the Purchaser's sole and exclusive rights and remedies, and the Company's entire obligations and liability, for any infringement or alleged

infringement of a third party's Intellectual Property.

16.6 Unless specifically authorised, the Purchaser undertakes that it shall not and that it shall not employ nor permit any third party outside the scope of the licence granted to it by Condition 16.1:

16.6.1 to disclose or make available any part or parts of the Software to any third party without the prior consent of the Company; and

16.6.2 except as permitted by law, to reverse engineer, de-compile, disassemble, modify, enhance, convert, copy or reproduce the Software.

16.7 The Purchaser further acknowledges that Software and all accompanying Documents are confidential and subject to the terms of Condition 20.

16.8 The Company and Purchaser shall comply with any applicable law with regards to privacy or data protection of personal data received from the Purchaser. The Company shall process the Purchaser's personal data as necessary to provide the Services and to meet the Company's obligations under the Contract and applicable law as a service provider and data processor of the Purchaser's personal data. The Company will process these personal data for the duration of the Contract and for the purpose of providing the Services and if applicable the delivery of the Product. The Company will process the Purchaser's personal data in accordance with Purchaser's instructions. Potential costs and charges associated with any additional or amended instructions shall be agreed pursuant to the terms of the Contract. The Company shall maintain an information and physical security program for the protection of the Purchaser personal data and confidential information (the "Honeywell Security Program") details of which are available on request. The Company may process your personal data as necessary to provide any Services and if applicable the Products to meet the Company's obligations under the Contract and applicable law as a data processor. The Company shall process the Purchaser's personal data for the duration of the term of the Contract including its consequences of termination provisions. The Purchaser as data controller acknowledges and agrees the Company may share the personal data with its Affiliates and may transfer the data to USA, India or Mexico. The Purchaser further agrees that the Company can and will transfer the Purchaser's personal data to the servers/cloud located in the USA. Further the Company will use its subcontractors and Affiliates to provide Services to the Purchaser. The current main subcontractors are HTSL India, and Honeywell International Inc. but these may change from time to time and the Company may notify the Purchaser of such changes. In the event the Company confirms a security breach leading to the accidental or unlawful destruction, loss, alteration or unauthorized disclosure of, or access to, the Purchaser's personal data ("Security Incident"), the Company will without undue delay notify the Purchaser of the Security Incident. The Company will provide the Purchaser with updates on the status of the Security Incident until the matter has been remediated. The Company shall at the request and cost of the Purchaser: provide reasonable assistance to the Purchaser in notifying a security breach to the supervisory authority competent under the relevant data protection laws applicable to the Purchaser; and provide reasonable assistance to the Purchaser in communicating a data breach to data subjects in cases where the data breach is likely to result in a high risk to the rights and freedoms of individuals.

17. EXPORT AND ANTI-CORRUPTION COMPLIANCE

17.1 Products for export are supplied in accordance with the applicable delivery method as agreed in writing by the parties under the Incoterms 2010. The Purchaser is responsible for arranging for testing and inspection of the Products at the Company's premises before shipment.

17.2 Unless otherwise agreed in writing by the Company, all Products and Software are supplied on the strict condition that:-

17.2.1 they are for civil use;

17.2.2 they are not to be supplied to any country or for any application prohibited by any law or regulation binding or in effect in the United Kingdom; and

17.2.3 they will not in any way be installed used or applied in or in connection with (i) the production of chemical or biological weapons or of precursor chemicals for such weapons, or (ii) the operation of any nuclear facilities such as but not limited to nuclear power plants, nuclear facilities fuel manufacturing plants, uranium enrichment plants, spent nuclear fuel stores or research

reactors.

17.3 The Parties acknowledge that export and trade laws, restrictions and/or regulations of more than one country may prevent or restrict trade with or the export to other countries and individuals of the Products, Services or Software. The Parties must comply with all applicable export and trade laws, restrictions and regulations and not directly or indirectly provide, export or re-export, or otherwise make available the Products, Services or Software in any form in violation of such laws, restrictions and regulations, including providing the Products, Services or Software (i) into Cuba, Iran, North Korea, Sudan, Syria or any other country subject to European Union, United States or any other relevant trade sanctions applicable in the country where the Company and/or Purchaser is located, or to individuals or entities controlled by such countries or to nationals or residents of such countries or (ii) to anyone on any denied, prohibited, or unverified list maintained by the European Union, United States or Governments of the country where the Company and/or Purchaser is located, including but not limited to the Office of Foreign Assets Control (OFAC) Specially Designated Nationals (SDN) List. The Purchaser shall indemnify the Company against any actions, costs, demands or expenses resulting from any failure by the Purchaser to comply with this Condition 17.3.

17.4 The Contract may be subject to United States/United Kingdom export control laws and a requirement to obtain a validated export licence as well as to similar laws in other applicable jurisdictions. If applicable the Company shall file for the export licence only after appropriate documentation for the licence application has been provided by the Purchaser who shall furnish such documentation within reasonable time after an Order Acknowledgement. Any delay in obtaining such licence shall suspend delivery dates without liability to either party. If an export licence is not granted or is revoked by the appropriate authorities, the Contract may be cancelled by the Company without liability for damages of any kind.

17.5 The Purchaser warrants that the Purchaser is familiar with and agrees to comply at all times with all United Kingdom (UK), United States (US), United Nations (UN), European Union (EU) and other international or national laws or regulations concerning (i) prohibition against commercial bribery or giving anything of value to any governmental official or candidate for political office in exchange for commercial advantage of any kind; (ii) prohibition against exporting or facilitating the export, directly or indirectly, of Products to certain countries which are embargoed by the UK, EU, US or other applicable UN, international or national sanctions; (iii) prohibition against complying with the boycott of certain countries covered by US anti-boycott legislation; and (iv) transferring any technology, know how or specialized technical information to countries where the transfer is regulated by licensing laws and permitting requirements with respect to such transfers.

18. FORCE MAJEURE

The Company shall not be liable for any failure to deliver or any other failure or delay to comply with any contractual or other obligation due to any cause beyond its reasonable control, including instructions or lack of instructions from the Purchaser, industrial disputes of any kind, shortage or increase in cost of labour or materials, failure of sub-contractors or suppliers to perform in supplying or acting, failure of telecommunications or power supply, war or other conflict, riot, insurrection, acts of God or of any local or government authority.

19. TERMINATION

19.1 The Company shall have the right at any time by giving notice in writing to the Purchaser to terminate the Contract immediately if:

19.1.1 the Purchaser commits a material or persistent breach of the Contract which breach, if capable of remedy, is not rectified within a period of thirty (30) days after the date of the Company's notice; or

19.1.2 the Purchaser makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purpose of amalgamation or reconstructions); or

19.1.3 an encumbrancer takes possession, or a receiver is appointed of any of the property or assets of the Purchaser; or

19.1.4 the Purchaser ceases or threatens to cease, to carry on business; or

19.1.5 the Purchaser breaches or is alleged to have breached any laws, rules or regulations related to bribery, corruption or money laundering, whether in the United Kingdom or anywhere else in the world; or

19.1.6 the Company reasonably considers that any of the events mentioned above is about to occur in relation to the Purchaser and notifies the Purchaser accordingly.

19.2 If Condition 19.1 applies then without prejudice to any other right or remedy available to the Company, the Company shall be entitled also to suspend any further deliveries under the Contract without any liability to the Purchaser, and if the Products and/or Services have been delivered or performed but not paid for, the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

20. CONFIDENTIALITY

20.1 Each party undertakes that it shall not at any time during the Contract and for a period of five (5) years after termination disclose to any person any confidential information disclosed to it by the other party concerning the business or affairs of the other party or of any affiliate, including but not limited to information relating to a party's operations, processes, plans, product information, know-how, designs, trade secrets, Software, Specifications, market opportunities and customers (**Confidential Information**), except as permitted by Condition 20.2.

20.2 A party may disclose the other party's Confidential Information:

- 20.2.1 to its employees or officers, agents, consultants or sub-contractors (**Representatives**) who need to know such information for the purposes of carrying out the party's obligations under the Contract, provided that the disclosing party takes all reasonable steps to ensure that its Representatives comply with the confidentiality obligations contained in this Condition 20 as though they were a party to the Contract. The disclosing party shall be responsible for its Representatives' compliance with the confidentiality obligations set out in this Condition 20 and shall be liable for any breach by those Representatives as if it were a breach by the receiving party itself; and
- 20.2.2 as may be required by law, court order or any governmental or regulatory authority provided that the receiving party shall, to the extent practicable and permitted, give the disclosing party prior notice of such requirement to enable the disclosing party to challenge the requirement should it so wish.

20.3 Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information other than those expressly stated in these Conditions are granted to the other party or to be implied from these Conditions.

21. GENERAL

21.1 The Contract and any dispute or claim arising out of or in connection with its formation or subject matter (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law.

21.2 In the event of any dispute, matter or claim of the Purchaser against the Company

(including non-contractual disputes or claims), the parties irrevocably submit to the exclusive jurisdiction of the English courts. In the event of any dispute, matter or claim of the Company against the Purchaser (including non-contractual disputes or claims), the parties irrevocably submit to the non-exclusive jurisdiction of the courts of the country in which the Purchaser is incorporated or conducts its main business.

21.3 The Purchaser may not assign, sub-contract, charge or otherwise transfer any of its rights, benefits or obligations under these Conditions to a third party without the prior written consent of the Company. The Company may assign, transfer or sub-contract any of its rights or obligations under the Contract without the prior written consent of the Purchaser.

21.4 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this Condition to the party giving the notice.

21.5 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of that or any of its other rights or remedies under the Contract nor shall it preclude or restrict any further exercise of that or any other right or remedy.

21.6 Any of the Company's Products which fall within the WEEE regulations must be disposed of locally at an authorised WEEE recycling outlet. The Company's WEEE producer identification number is WEEE/EJ0221XT/PRO. The Company does not offer a take back service for these Products.

21.7 The Company's Battery Producer Registration Number is BPRN00680 which is relevant for UK customers only.

21.8 If any provision of the Contract is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of the Contract and the remainder of the provision in question shall continue in full force and effect.

21.9 The Contract constitutes the whole agreement between the parties and supersedes any previous arrangement, understanding or agreement between them relating to the subject matter of the Contract. Each party acknowledges that, in entering into the Contract, it has not relied on any statement, representation, assurance or warranty (whether made negligently or innocently) other than those expressly set out in the Contract. Each party agrees that all liability for and remedies in respect of any representations are excluded except as expressly provided in the Contract.

21.10 For the avoidance of doubt, the terms of the United Nations Convention on Contracts for the International Sale of Goods will not apply to this Contract, unless otherwise agreed by the Company in writing.

A FULL SIZE COPY IS AVAILABLE ON REQUEST