



Quotation 22250001

COPY

Valid From: 11/02/2022
Valid to: 12/31/2022

Sold to: 1565710
City Of Ocala
1805 NE 30Th Ave
Bldg 600
Ocala FL 34470
United States
TAX Reg.No:

Ship to: 1565710
City Of Ocala
1805 NE 30Th Ave
Bldg 600
Ocala FL 34470
United States

Elster Solutions, LLC
208 S Rogers Lane
Raleigh NC 27610
United States

Bill to: 1565710
City Of Ocala
1805 NE 30Th Ave
Bldg 600
Ocala FL 34470
United States

Currency: USD
Payment Terms: Payment due 90 days upon billing date
Incoterms: FOB Origin
Reference No: 2023 Annual SMA Renewal

Table with columns: ITEM NO., MATERIAL NO. DESCRIPTION, QTY ORD, UOM, LEAD TIME DAYS, UNIT PRICE, EXT. PRICE. Row 1: 000010, HPS_SMA, 2023 SMA 01/01/2023 - 12/31/2023, 1, EA, 11/02/2022, 62,100.00, 62,100.00

Please review the attached SMA renewal calculation. Please forward a Purchase Order or sign and return this Acknowledgement to confirm your intention to renew. Total before TAX 62,100.00, Total Amount 62,100.00

Comments
If you have any queries, please contact the Sales Representative at the number(s) listed. The delivery date will be confirmed at the time of order placement.

Table with registration details: Registered No: 3580408, VAT Reg No, Federal ID #: 16-1636768, Duns #: 125983887, Registered Address: Elster Solutions, LLC, 208 South Rogers Lane, Raleigh, 27610-2144, United States, Customer Support: Customer Care Rep: Global Customer Care (GCC), Sales Rep: Jim Schreiber 8003385251

For our standard Terms and Conditions see overleaf.

Remittance Email: HoneywellAmericasRemits@Honeywell.com
Approved as to form and legality:
James P. Hilty, Sr. City Council President
Angel Jacobs City Clerk
William E. Sexton City Attorney

TERMS AND CONDITIONS

Honeywell Process Solutions-Smart Energy- Elster Solutions, LLC
Sales Terms and Conditions

1.GENERAL DEFINITIONS

- 1.1. "**Affiliate**" means any entity that controls, is controlled by or is under common control with, another 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. The term Affiliate includes, among other entities, subsidiaries.
- 1.2. "**Agreement**" means the written agreement, including these Sales Terms and Conditions and any addendum to them ("Addendum") together with relevant Orders, made between Buyer and Honeywell for the Deliverables.
- 1.3. "**Buyer**" means the entity issuing an Order.
- 1.4. "**Buyer Personal Data**" means Personal Data received by Honeywell from or on behalf of Buyer in connection with Honeywell's performance of its obligations under the Order as more particularly described in this Agreement.
- 1.5. "**Deliverables**" means equipment and parts (collectively "Products"), services ("Services") and Software, each supplied or licensed by Honeywell to Buyer under an Order.
- 1.6. "**Honeywell**" means Elster Solutions, LLC or, the Honeywell International Inc. Affiliate that accepts the Order.
- 1.7. "**Order**" means a Buyer purchase order accepted by Honeywell.
- 1.8. "**Party**" means Honeywell or Buyer and "Parties" means both.
- 1.9. "**Personal Data**" means the definition in the EU General Data Protection Legislation (GDPR) (Regulation (EU) 2016/679) regardless of the applicable privacy laws.
- 1.10. "**Software**" means software (in any form, including as a service) and firmware provided by Honeywell, and all related documentation, data files, modules, libraries, and elements. Software includes any updates, upgrades, error corrections, changes or revisions delivered by Honeywell to Buyer under the Agreement or a separate agreement.

2.DELIVERY AND ACCEPTANCE

- 2.1 Delivery terms are EX-Works (INCOTERMS 2010) Honeywell's facility. Title to Products passes to Buyer when Honeywell places Products at Buyer's disposal at Honeywell's facility. Buyer grants Honeywell a security interest in Products until paid in full, subject to applicable law. Deliverables are deemed accepted unless Buyer sends written notice specifying reasonable basis for rejection within 30 days after delivery. Honeywell will, at its option, repair, replace, or re-perform rejected Deliverables.
- 2.2 If a delivery hereunder is delayed due to Buyer's actions or inaction, Honeywell may extend delivery time equal to the length of such delay and shall be entitled to receive compensation for reasonable costs incurred by Honeywell resulting from such delay.
- 2.3 Honeywell will invoice handling costs, including for additional storage and logistics, if Buyer does not take delivery within 30 days after Honeywell sends written notice to Buyer that the Deliverables are available for delivery.

3.PAYMENT

- 3.1 Buyer will pay invoices within 30 days from the date of invoice to the account specified by Honeywell with immediately available funds through electronic transfer. Honeywell may submit invoices electronically. Payment must be made in U.S. currency unless agreed otherwise in the Order.
- 3.2 Buyer must provide the following remittance information when making a payment: (a) invoice number, (b) amount paid. Payment must be in accordance with the "Remit To" field on each invoice. If remittance information is missing, Honeywell will invoice service fee of \$ 500 for each such occurrence.
- 3.3 Honeywell may make partial deliveries that will be invoiced as they are delivered.
- 3.4 Honeywell may also increase price and recover associated costs, for the following that occur between the date of the Order and delivery: (a) foreign exchange variation, (b) increased cost of third party content and materials, (c) periodic price increase of Products and Services, (d) impact of government tariffs, and (e) increases in costs of industrial metals as published by the London Metal Exchange (<https://www.lme.com>)
- 3.5 If Buyer pays late, Honeywell may: (a) suspend deliveries until all delinquent amounts and late interest, if any, are paid, (b) repossess Products or software for which payment has not been made, (c) charge interest for non-payment at lesser of 1.5 % per month for each full or partial month or the maximum legal rate available under governing law, (d) recover all costs of collection, including but not limited to reasonable attorneys' fees, and (e) combine any of the above rights and remedies as may be permitted by applicable law.
- 3.6 If Buyer does not dispute an invoice within 15 days after invoice date, Buyer has waived the right to do so. Honeywell reserves the right to correct any inaccurate invoices.
- 3.7 Buyer may pay by following credit cards: Visa, MasterCard or American Express. Honeywell accepts credit card payment only if the credit card is charged on the same day Honeywell invoices Buyer or before the date of the Honeywell invoice.
- 3.8 Buyer may not set off invoiced amounts against sums that are due from Honeywell. Honeywell extends credit only if Buyer maintains acceptable credit standing.

4.TAXES

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

5.FORCE MAJEURE AND DELAY

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

6.WARRANTIES

- 6.1. Honeywell warrants Honeywell Products comply with applicable Honeywell specifications and are free from material defects in workmanship and material for 12 months after date of delivery, and Services materially comply with defined requirements for 30 days from the date services are performed. Third party warranties, if any, are transferred to Buyer to the extent Honeywell has the right to transfer. Honeywell will, at its option, repair or replace defective Products, if returned to Honeywell within the warranty period, and re-perform defective Services if notified to Honeywell during the warranty period. Products repaired or replaced and Services re-performed are warranted for the remainder of the original warranty period or 90 days (for Products) whichever is longer.
- 6.2. Honeywell is not, and will not be, liable for defects attributable to: (a) noncompliance with Honeywell's instructions, (b) unauthorized alterations or repairs, (c) accident, contamination, abuse, or negligence, or (d) damage caused by failure of any item or service not supplied by Honeywell.
- 6.3. WARRANTIES IN THIS SECTION ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER WRITTEN, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR PARTICULAR PURPOSE. THE REMEDIES IN THIS SECTION ARE BUYER'S ONLY REMEDIES FOR BREACH OF WARRANTY.

7.LIMITATION OF LIABILITY

IN NO EVENT WILL HONEYWELL BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, STATUTORY OR INDIRECT DAMAGES, INCLUDING WITHOUT LIMITATION, LOSS OF PROFITS, REVENUES OR USE, OR THE LOSS OR CORRUPTION OF DATA, EVEN IF INFORMED OF THE POSSIBILITY OF THESE DAMAGES, THE AGGREGATE LIABILITY OF HONEYWELL RELATED TO THE ORDER WILL IN NO CASE EXCEED THE LESSER OF THE INITIAL ORDER PRICE OR US \$1,000,000. TO THE EXTENT PERMITTED BY APPLICABLE LAW, THESE LIMITATIONS AND EXCLUSIONS APPLY IF LIABILITY ARISES FROM BREACH OF CONTRACT, INDEMNITY, WARRANTY, TORT (INCLUDING NEGLIGENCE), OPERATION OF LAW, OR OTHERWISE.

8.PATENT AND COPYRIGHT INDEMNITY

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

9.CHANGE ORDERS

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

TERMS AND CONDITIONS

10. DEFAULT AND TERMINATION

Either Party may terminate or suspend an Order for material breach of the Agreement if the breaching Party fails to begin a cure within 10 days after receipt of written notice from non-breaching Party specifying the grounds, and to continue diligently to cure the breach. If Buyer cancels an Order without cause, Honeywell may enforce any available remedies against Buyer, including seeking recovery of expenses incurred by Honeywell due to producing Deliverables, such as expenses and costs associated with demobilization, remobilization, contract breakage, restocking, product obsolescence and stranded costs. Honeywell may cancel any applicable pricing discounts if Buyer fails to pay timely an undisputed invoice. Honeywell will notify Buyer and parties will engage in a mandatory executive escalation meeting with authorized decision makers within 10 days from Honeywell's non-payment notice.

11. INVENTIONS AND INTELLECTUAL PROPERTY

11.1. "Intellectual Property" means all copyrights, trademarks, trade secrets, patents, utility models and other intellectual property rights recognized in any jurisdiction worldwide, including all applications and registrations.

11.2. No right, title or interest in Intellectual Property provided by Honeywell is transferred to Buyer under the Agreement, including Intellectual Property existing prior to, or created independently of, the performance of the Agreement. All Intellectual Property and results of Services, including software, models, designs, drawings, documents, inventions, and know-how ("Inventions"), conceived or developed by Honeywell in connection with the Agreement, are the sole property of Honeywell and Buyer assigns any rights it may have in such Inventions to Honeywell. Buyer has no right or license to Intellectual Property or Inventions provided by Honeywell, except as granted in the Agreement.

Honeywell and its suppliers retain all right, title and interest to all Software, and all modifications and enhancements thereof, and no right, title, or interest in the Software, or any copies thereof, is transferred to Buyer. Buyer will hold all Software supplied by Honeywell in strict confidence and will use best efforts not to disclose Software to others. All Software delivered by Honeywell is subject to a software license or software subscription agreement ("License"). If Buyer does not agree to a License with Honeywell, Buyer does not have a license or right to Software.

Buyer retains all rights that Buyer already holds in data and other information that Buyer or persons acting on Buyer's behalf input, upload, transfer or make accessible in relation to, or which is collected from Buyer or third party devices or equipment by, the Deliverables ("Input Data").

11.3. Honeywell and its Affiliates have the right to retain, transfer, disclose, duplicate, analyze, modify and otherwise use Input Data to provide, protect, improve or develop Honeywell's products or services. Honeywell and its Affiliates may also use Input Data for any other purpose provided it is in an anonymized form that does not identify Buyer. Any Buyer Personal Data contained within Input Data shall only be used or processed in accordance with the data privacy terms of this Agreement and applicable law. All information, analysis, insights, inventions and algorithms derived from Input Data by Honeywell and/or its Affiliates (but excluding Input Data itself) and any intellectual property rights related thereto, are owned exclusively and solely by Honeywell and are Honeywell's confidential information. This section survives termination of this Agreement.

12. CONFIDENTIAL INFORMATION

12.1. "Confidential Information" is information that: (a) is marked as "Confidential" or "Proprietary" at the time of disclosure; or (b) is disclosed orally or visually, is identified by the Party disclosing the information ("Discloser") as confidential at the time of disclosure, and is designated as confidential in a writing sent to the receiving Party ("Recipient") within 30 days after disclosure that summarizes the Confidential Information sufficiently for identification, or (c) is Personal Data.

12.2. Recipient will:

(a) use the Confidential Information only for the performance of the Agreement ("Purpose"); (b) disclose Confidential Information only to its employees and any sub-contractors or third parties required to have Confidential Information for the Purpose and who are legally bound in writing to Recipient to protect the Confidential Information in accordance with terms and conditions no less stringent than those imposed under this Agreement; and (c) protect Confidential Information using the same degree of care, but no less than reasonable care, as Recipient uses to protect its own confidential information of a like nature. Recipient will reproduce the restrictive legends of the original on copies it makes. Recipient may disclose Confidential Information to a third party only if authorized in writing and under conditions required by Discloser. Recipient is responsible to Discloser for any violation of the confidentiality obligations by its employees or an authorized third party of the Recipient.

Within 30 days of Discloser's written request, Recipient will return or destroy all Confidential Information of Discloser, including all copies thereof, and will certify to such return or destruction in writing to Discloser. Unless otherwise specified, each Party's obligations with respect to the Confidential Information of the other Party will continue for five years after the date of receipt.

Confidential Information will not include any information that:

(a) was in Recipient's possession and not subject to an obligation of confidentiality before receipt from Discloser; (b) is or becomes legally available in the public domain through no fault of Recipient; (c) was rightfully received by Recipient from a third party who had no obligation of confidentiality, either directly or indirectly, to Discloser; or (d) was independently developed by Recipient without use of or reference to Discloser's Confidential Information.

If Recipient is required to disclose Confidential Information by applicable law, statute, regulation, or court order, Recipient will, if legally permitted, (x) give Discloser prompt written notice of the request and a reasonable opportunity to object to the disclosure and seek a protective order or appropriate remedy; and (y) disclose Confidential Information only to the extent required.

12.3. The parties agree that breach of the confidentiality obligations by the Recipient will cause irreparable damage for which money damages will not be fully adequate, and Discloser is entitled to seek injunctive relief, in addition to any other legal remedies.

13. DATA PRIVACY

13.1 Honeywell may process Buyer Personal Data in relation to the Deliverables as detailed in this Agreement and including in accordance with the following scope, in each case as further specified in an Order as necessary:

Categories of Data Subjects: Buyer and Buyer's Affiliates' customers, employees, contractors, end-users and service providers.

Categories of data: name, contact information (including physical addresses, email address and telephone numbers), location information, facility, device or equipment usage data.

Special categories of data: Buyer Personal Data processed by Honeywell shall not include special categories of data.

13.2. Buyer Personal Data may be processed in relation to this Agreement. To the extent the laws of a jurisdiction recognize the roles of "data controller" and "data processor" as applied to Personal Data then, as between Buyer and Honeywell, Buyer acts as data controller and Honeywell acts as data processor and shall process Personal Data solely on behalf of and in accordance with Buyer's documented instructions, the Agreement and applicable privacy laws and only to the extent, and for so long as necessary, to provide, protect, improve or develop the Deliverables and/or related services and perform rights and obligations under the Agreement. Both Parties shall comply with their obligations under applicable privacy laws including in their respective roles as controller and processor of Personal Data.

13.3. Buyer authorizes Honeywell to share Personal Data with sub-processors (including Affiliates and service providers) located in any jurisdiction in connection with the Agreement, provided Honeywell uses legally enforceable transfer mechanisms and contractually requires sub-processors to abide by terms no less restrictive than those in the Agreement with regards to processing of Personal Data.

13.4. Honeywell shall have no liability for any losses, costs, expenses or liabilities arising from or in connection with processing of Personal Data in compliance with the Agreement or otherwise in compliance with Buyer's written instructions.

13.5. Honeywell shall refer all data subject requests to exercise rights under applicable privacy laws to Buyer and provide reasonable assistance to enable Buyer to comply with such requests, enable Personal Data security, respond to complaints or inquiries and to conduct any privacy impact assessments, provided Buyer reimburse all reasonably incurred costs.

13.6. Upon termination Honeywell shall delete or anonymize all Buyer Personal Data, except Honeywell may retain Buyer Personal Data if required or permitted by applicable law for compliance, audit or security purposes.

13.7. If Honeywell processes Personal Data relating to data subjects in the European Economic Area ("EEA"), Switzerland or Philippines: (i) if Honeywell believes any instruction from Buyer will violate applicable privacy laws, or if applicable law requires Honeywell to process Personal Data relating to data subjects in the EEA in a way that is not in line with Buyer's documented instructions Honeywell shall notify Buyer in writing, unless the law prohibits such notification on important grounds of public interest; (ii) Honeywell shall upon request make available the identity of sub-processors and notify any intended addition or replacement and Buyer shall have 5 business days to object. If Buyer objects and the parties do not resolve within 1 month, Honeywell may terminate without penalty on written notice; and (iii) Honeywell shall ensure personnel processing Personal Data of EEA data subjects have committed to confidentiality in relation to such processing.

13.8. Where transfers of Personal Data require: (i) Buyer authorizes Honeywell and Honeywell Affiliates to act as agent for the limited purpose of binding Buyer as principal, in the capacity of "data exporter", to a Honeywell inter-group or Honeywell and service provider data transfer agreement comprising the Standard Contractual Clauses for the transfer of personal data to processors established in third countries adopted by the European Commission ("SCCs"); and (ii) the parties agree that the SCCs (located at https://ec.europa.eu/info/law/law-topics/data-protection/data-transfers-outside-eu/modern-contracts-transfer-personal-data-third-countries_en or updated more recent websites) shall be deemed to have been signed by Buyer and Buyer's affiliates, in the capacity of "data exporter", and by Honeywell and/or Honeywell's affiliates, in the capacity of "data importer" and the information required to be provided in the SCCs' appendices shall be as described in this Section or separately agreed in writing.

13.9. Security is governed by the policies as further specified in the Order. If no additional Security Policy is specified in the Order, Honeywell will use reasonable administrative, physical and technical safeguards to protect Personal Data and Input Data and follow industry-standard security practices. Buyer will implement reasonable administrative, physical and technical safeguards to protect Deliverables and follow industry-standard security practices. Buyer is solely responsible for costs incurred due to unauthorized use or access through Buyer's account credentials or systems.

13.10. To the extent Honeywell has not obtained or provided Buyer with evidence of formal certification under SOC2 Type 1 and Type 2 (or equivalent), Buyer may audit Honeywell's compliance with this Section once per year, or more frequently if applicable laws require. Audits will occur following Buyer's written request at least 90 days prior to the proposed start date and Buyer providing a reasonably detailed audit plan describing the proposed scope, start date and duration. The Parties will work in good faith to agree on a final audit plan. Each Party will bear their own costs related to the audit. The audit will be conducted during Honeywell regular business hours at the applicable facility, subject to the published policies of that facility, and may not unreasonably interfere with business activities. If a third party is to conduct the audit they must execute a written confidentiality agreement acceptable to Honeywell. If the information required for an audit is not contained in existing reports, Honeywell will make reasonable efforts to provide it to the auditor. To preserve the security of Honeywell customers and organization Honeywell reserves the right to not share information that could expose or compromise its security, privacy, employment policies or obligations to other customers or third parties or share Confidential Information. Records may not be copied or removed from Honeywell facilities. Buyer will generate and provide Honeywell with an audit report within 3 months of audit end, unless prohibited by law. Audit reports are Honeywell Confidential Information and may only be used for the purposes of meeting Buyer's regulatory requirements or confirming Honeywell's compliance with this Section.

13.11. Honeywell shall evaluate and respond to any confirmed breach of security leading to the accidental or unlawful destruction, loss, alteration or unauthorized access, disclosure or use of the Deliverables and/or of Buyer Personal Data due to a breach of Honeywell's obligations under this Section (each a "Security Incident"), and will work with Buyer (and where necessary with outside regulatory and law enforcement authorities) to develop response strategies and respond to and mitigate the adverse effects of a Security Incident. Where it is determined a Security Incident has occurred, Honeywell shall notify Buyer without undue delay and as relevant information becomes available to assist Buyer in meeting its potential reporting or notice obligations under applicable law. Honeywell shall include a description, whether and what type of Personal Data or Input Data may have been affected and such information as Honeywell may reasonably request, unless the law prohibits it. Buyer shall work with Honeywell in good faith to develop any related public statements or required notices resulting from a Security Incident. Provided Honeywell is in material compliance with its obligations under this Section, Honeywell's obligations set out in this Section are Honeywell's sole obligations, and Buyer's sole and exclusive remedy, for Security Incidents.

13.12. Each Party may process certain business contact details relating to individuals engaged by the other Party in the performance their obligations under this Agreement ("Staff"). Each Party will take appropriate technical and organizational measures to protect such Personal Data against Security Incidents and shall securely delete it once no longer required for the purposes for which it is processed. Where required under applicable privacy laws, each Party shall inform its own Staff that they may exercise their rights in respect of their Personal Data against the other Party by submitting a written request with proof of identity to that other Party.

14. MISCELLANEOUS

14.1. Each Party is responsible for compliance with all import, export, and re-export control laws and regulations and will mutually cooperate as needed.

14.2. Honeywell may suspend Services at Buyer's expense if Honeywell determines that performance of Services may compromise safety.

14.3. Buyer will allow Honeywell to issue mutually agreeable press releases, technical papers, photographs and other publications relating to this Agreement and the general operation of the Deliverables.

14.4. While cyber security services will be provided in professional and workmanlike manner, and include reasonable efforts to validate that recommended third party cyber security solutions will not detrimentally impact performance of Honeywell standard products, Honeywell makes no guarantee that the cyber security products (inclusive of equipment, software and services) provided by Honeywell ("Cyber Security Products") will prevent a cyber-attack or mitigate the impact of any cyber-attack and Buyer acknowledges that Honeywell's sole liability, and customer's sole remedy, for any failure of the Cyber Security Products to perform as specified is replacement of defective product and/or re-performance of defective service, provided Honeywell is notified by Buyer of the defects in the Cyber Security Products during the agreed upon warranty period. Notwithstanding any other terms agreed to between Honeywell and Buyer, Buyer acknowledges that all Cyber Security Products that do not carry the Honeywell brand ("Third Party Product") are provided to customer subject to the Third Party Product supplier's standard terms and conditions (including software license terms) in effect at the time such Third Party Products are delivered to Buyer and Honeywell has no liability whatsoever with respect to the performance or non-performance of such Third Party Products

TERMS AND CONDITIONS

- 14.5. If any provision of the Agreement is determined to be illegal, invalid, or unenforceable, the validity of the remaining provisions will not be affected.
- 14.6. The failure of either Party to enforce at any time any provision of the Agreement may not be construed to be a continuing waiver of those provisions.
- 14.7. The Agreement is governed by the laws of the state of New York, United States of America, without regard to conflicts of law principles. Application of the Uniform Computer Information Transactions Act and United Nations Convention on Contracts for the International Sale of Goods, 1980, and any successor law to either, is specifically excluded. The Parties waive any right to a trial by jury for disputes and submit to the exclusive jurisdiction of the Federal and State courts within the Southern District of New York for resolution of disputes; however, Honeywell may seek an injunction or enforce a judgment against Buyer in any jurisdiction. Buyer will not bring a legal action more than two years after the cause of action arose unless a shorter period is provided by applicable law.
- 14.8. The Agreement contains the entire agreement between the Parties and any pre-printed terms are excluded. Any terms on facility entry documents or other similar documents signed by Honeywell after the Order date are not applicable. If there is any conflict in terms, the order of precedence is the License, any Addendum, the acceptance, the Agreement (excluding the Order), and then the Order.
- 14.9. The Agreement may not be varied except by a written change signed by authorized representatives of both Parties. Provisions of the Agreement that by their nature should continue in force beyond the completion or termination of the Order will remain in force. Buyer will not delegate, transfer, or assign, by operation of law or otherwise, the Agreement, or rights or obligations under it, without Honeywell's prior written consent and any attempt to do so is void. For purposes of this Section, assignment includes any change in control of the Buyer or the merger of Buyer with any other legal entity.
- 14.10 The attached addendum and all terms and conditions therein are incorporated by reference.
- 14.11 Except for sections 1.7 and 14.8, the word "Order" is replaced with "Agreement" throughout these Sales Terms and Conditions. ***

Capitalized terms used in this Addendum and not otherwise defined shall have the meaning ascribed to such terms in the applicable agreements, between the Parties.

1. SUPPLEMENTAL TERMS RELATED TO WARRANTIES

1.1 Goods Warranty

Honeywell warrants that goods shall be delivered free of defects in material and workmanship. The warranty remedy period for goods shall end:

- (a) For meters and modules: twelve (12) months after date of shipment.
- (b) For handheld meter reading units: sixty (60) months after date of shipment.
- (c) For belt clips and optical probes: twenty-four (24) months after date of shipment.
- (d) For all other "goods" including gatekeepers, routers, repeaters, AGI nodes, mobile interrogators, VIDs: twelve (12) months after i after date of shipment.

All products repaired or replaced, if any, are warranted only for the remaining and unexpired portion of the original warranty period.

1.2 Goods Remedy

If a nonconformity to the foregoing warranty is discovered in the goods during the applicable warranty remedy period under normal and proper use, and provided the goods have been properly stored, installed, operated and maintained (Buyer to provide proper records), and written notice of such nonconformity is provided to Honeywell promptly after such discovery and within the applicable warranty remedy period, Honeywell shall, at its option, either (i) repair or replace the nonconforming portion of the goods, or (ii) refund the portion of the price applicable to the nonconforming portion of goods.

1.3 Services Warranty

Honeywell warrants that services shall be performed in a good and workmanlike manner. The warranty remedy period for services shall end ninety (90) days after the date of completion of services.

1.4 Services Remedy

If a nonconformity to the foregoing warranty is discovered in the services during the applicable warranty remedy period, and written notice of such nonconformity is provided to Honeywell promptly after such discovery and within the applicable warranty remedy period, Honeywell shall, at its option, either (i) re-perform the nonconforming services or (ii) refund the portion of the price applicable to the nonconforming portion of the services.

1.5 Water and Gas Module Battery Warranty (to the extent applicable to this purchase)

Honeywell warrants that the water and gas module batteries shall be delivered free of defects in material and workmanship. The Module Battery warranty period shall be twenty (20) years after date of shipment.

1.6 Water and Gas Module Battery Remedy (to the extent applicable to this purchase)

If a warranted battery nonconformity is discovered in the Modules during the first 10 years from the original date of shipment, under normal and proper use, and provided the Modules have been properly stored, installed, operated and maintained (Buyer to provide proper records), and the nonconformity is validated by Honeywell during the applicable warranty remedy period, Honeywell shall, at its sole option, either (i) repair or replace the nonconforming portion of the Module, or (ii) refund the portion of the price applicable to the nonconforming portion, less a prorated benefit the Modules have provided. All products repaired or replaced, if any, are warranted only for the remaining and unexpired portion of the original warranty period.

If a warranted battery nonconformity is discovered in the Modules in years 11 through 20 from the original date of shipment, under normal and proper use, and provided the Modules have been properly stored, installed, operated and maintained (Buyer to provide proper records), and the battery nonconformity is validated by Honeywell during the applicable warranty remedy period, Honeywell's sole obligation will be to provide Buyer with a discount on substantially equivalent replacement product at a prorated percentage, applied towards the published list prices in effect in the year the product is determined to be nonconforming, as determined by Honeywell through RMA, in accordance with the following schedule:

Years	Discount off of List Price
1-10	Does Not Apply
11	50%
12	45%
13	40%
14	35%
15	30%
16	25%
17	20%
18	15%
19	10%
20	5%

1.7 Additional Warranties

Notwithstanding the foregoing, certain warranties may be provided under the System License Agreement, the System Maintenance Agreement and the Handheld Unit Maintenance Agreement, but any such warranties are subject to the terms thereof and do not apply to the goods and services warranted in this Section.

1.8 Warranty Returns

For warranty returns of Honeywell manufactured products, Buyer will pay freight to Honeywell point of manufacture. Honeywell will provide all freight charges for return of repaired or replaced items from its factory. After expiration of the warranty period, Buyer is responsible for payment of any support or maintenance agreements for computer hardware and/or third party software used in the system.

1.9 Exceptions

In no event, shall Honeywell be responsible for gaining access to the goods, disassembly, reassembly or transportation of the goods or parts from or to the place of installation, all of which shall be at Buyer's risk and expense. Honeywell shall have no obligation hereunder with respect to any goods which (i) have been improperly repaired or altered; (ii) have been subjected to misuse, negligence or accident; (iii) have been damaged due to forces of nature; (iv) have been used in a manner contrary to Honeywell's instructions; or (v) are comprised of materials provided by or a design specified by Buyer.

Honeywell makes no system performance guarantees and offers no warranties as to the operation, function or performance of unapproved WAN solutions. Honeywell assumes no responsibility and offers no warranty for system components impacted by the use of unapproved WAN solutions. Use of unapproved WAN solutions nullifies all stated system performance guarantees.

The foregoing warranties are exclusive and in lieu of all other warranties of quality and performance, whether written, oral or implied, and all other warranties including any implied warranties of merchantability or fitness for a particular purpose, non-infringement or usage of trade are hereby disclaimed. The remedies stated herein constitute Buyer's exclusive remedies and Honeywell's entire liability for any breach of warranty. Notwithstanding the foregoing, goods and equipment manufactured by others and supplied by Honeywell, are warranted only to the extent of the manufacturer's warranty, and only the remedies, if any, provided by the manufacturer ("third party warranties"). For avoidance of doubt, third party warranties apply to third party AMR/AMI communication modules incorporated into Honeywell goods.

2. SUPPLEMENTAL TERMS RELATED TO FORECAST AND ORDER PROCESS

2.1 Products shall be delivered in accordance with the then-current posted lead times. Honeywell reserves the right to charge expedite fees for early delivery requests. Certain order details are required for Honeywell to meet posted lead times, including but limited to, bill to/ship to, quantity, price, part number/product description, meter/device program, nameplate details, etc. Occasionally Honeywell may experience changes in capacity that could affect product delivery. In the event of additional capacity, Honeywell may contact the Buyer to inquire if the Buyer would prefer early delivery. In the event of capacity constraints, Honeywell may contact the Buyer to offer alternative delivery options, such as partial delivery.

2.2 The Buyer shall provide Honeywell a rolling twelve-month forecast for Honeywell Products every three months at least ten (10) business days prior to the first day of the quarter. The Buyer will provide the first twelve-month forecast within ten (10) business days of the Effective Date.

2.3 In relation to any Forecast:

2.3.1.1 the first three months of any rolling twelve-month forecast shall be binding ("Binding Forecast").

2.3.2 subject to the agreed tolerance [15%] the subsequent three months shall constitute a Binding Forecast.

2.3.3 the remaining six (6) months will constitute a non-binding good faith estimate of the Buyer's requirements.

2.4 The Buyer shall issue Orders in strict accordance with the applicable Binding Forecast and the then-current lead times.

TERMS AND CONDITIONS

2.5 The Buyer and Honeywell agree that an Order may be issued by the Buyer, and accepted by Honeywell, via facsimile, email, or other electronic means. The Buyer and Honeywell further agree not to contest the validity or enforceability of Orders on the basis of their not being actually signed or not being originals.

2.6 An Order will become a binding contract upon written notice of acceptance by Honeywell or, if applicable, upon Honeywell's signing and returning the Order acknowledgment copy with notice of acceptance.

2.7 If Honeywell fails to acknowledge and accept an Order placed by the Buyer in strict accordance with a Binding Forecast within ten (10) business days of receipt of the relevant Order, for reasons other than (a) Force Majeure Event, (b) manifest error in the Order, or (c) non-conformity with the then-current lead time, the Order shall be deemed to be accepted without reservation by Honeywell.

2.8 In the event an Order is not in accordance with the then-current applicable lead times and/or Binding Forecast, Honeywell shall either accept or reject the Order within ten (10) business days of receipt of the relevant Order stating reasons if the Order is rejected.

2.9 If the Buyer fails to purchase the volume of Honeywell Products provided in the Binding Forecast for reasons other than (a) Force Majeure Event, (b) a failure of Honeywell to deliver product in accordance with the Specification, or (c) non-purchases of Honeywell Products due solely to the fault of Honeywell, then the Buyer shall pay for the Honeywell Products equal to the difference between the Binding Forecast and the quantity of Honeywell Products actually purchased by the Buyer in the applicable three-month period.

3. SUPPLEMENTAL TERMS RELATED TO VOLUME COMMITMENT

3.1 An amount equal to XXX items of Honeywell Products which the Buyer must Order from the Honeywell during the Initial Term, as defined in the Master Agreement ("Volume Commitment").

3.2 Where the Buyer does not order an amount equal to or greater than the Volume Commitment during the Initial Term, the Buyer shall place an Order for the remaining Volume Commitment and where the Buyer fails to place such Order within twenty (20) business days of the end of the Initial Term, such Order shall be deemed to have been placed. The Buyer shall pay for the Honeywell products equal to the difference between the Volume Commitment and the quantity of Honeywell Products actually purchased by the Buyer during the Initial Term.

4. SUPPLEMENTAL TERMS RELATED TO HAZARDOUS OR UNSAFE SITE CONDITIONS (if applicable):




4.1 Buyer recognizes that Honeywell employees have the right to a safe and healthy work environment and agrees that Honeywell may suspend services at Buyer's expense if Honeywell determines that unsafe conditions at the site may compromise Honeywell employee safety. Services will be resumed once the unsafe conditions have been corrected by Buyer. Honeywell will not be liable for failure to meet contractual obligations in the event it suspends performance due to hazardous or unsafe conditions.

4.2 Buyer represents that Buyer has not retained Honeywell to discover, inspect, investigate, identify, prevent or remediate hazardous substances or mold or conditions caused by hazardous substances or mold.

4.3 TO THE FULLEST EXTENT ALLOWED BY LAW, BUYER SHALL INDEMNIFY AND HOLD HONEYWELL HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS AND COSTS OF WHATEVER NATURE, INCLUDING BUT NOT LIMITED TO, CONSULTANTS' AND ATTORNEYS' FEES; DAMAGES FOR BODILY INJURY AND PROPERTY DAMAGE, FINES, PENALTIES, CLEANUP COSTS AND COSTS ASSOCIATED WITH DELAY OR WORK STOPPAGE, THAT IN ANY WAY RESULTS FROM OR ARISES UNDER THE EXISTENCE OF HAZARDOUS CONDITIONS, MOLD OR A HAZARDOUS SUBSTANCE AT A SITE, WHETHER OR NOT BUYER PROVIDES HONEYWELL ADVANCE NOTICE OF THE EXISTENCE OR OCCURRENCE AND REGARDLESS OF WHEN THE HAZARDOUS CONDITION, SUBSTANCE OR OCCURRENCE IS DISCOVERED OR OCCURS. THIS INDEMNIFICATION SHALL SURVIVE TERMINATION OF HIS AGREEMENT FOR ANY REASON.

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