

# HONEYWELL PARTS ORDER TERMS AND CONDITIONS

## 1. DEFINITIONS

1.1. **“Agreement”**: means these terms and conditions and applicable Order(s) that form the contract between Honeywell and Buyer.

1.2. **“Buyer”**: means Honeywell’s customer, whether a buyer, consignee, lessee or licensee.

1.3. **“Nonconformance”**: means failure to comply with, or failure to operate due to noncompliance with, applicable Honeywell specifications or having defects in workmanship or material. Normal wear and tear and the need for regular overhaul and periodic maintenance do not constitute Nonconformance.

1.4. **“Order”**: means a purchase order, work order or other written agreement or contract, including the Order documents defined therein, entered into between Buyer and accepted in writing by an authorized Honeywell employee.

1.5. **“Parts”**: means hardware parts-recycled or new-provided by Honeywell as described in the Order.

1.6. **“Party”**: means either Honeywell or Buyer respectively.

1.7. **“Proprietary Information”**: means: 1) any information, technical data or know-how in whatever form, including, but not limited to, documented information, machine readable or interpreted information, information contained in physical components, maskworks and artwork, that is clearly identified as being confidential, proprietary or a trade secret, 2) business related information including but not limited to pricing, manufacturing, or marketing, 3) the terms and conditions of any proposed or actual agreement between the Parties, 4) either Party’s business policies, or practices, and 5) the information of others that is received by either Party under an obligation of confidentiality.

1.8. **“Software”**: means machine-readable object and source code, including executable programs and firmware, and user documentation in written or electronic object code form.

1.9. **“Work”**: means the labor, Parts, materials and services, as defined in the Order, to be provided by Honeywell.

## 2. ORDERS

Orders will be governed exclusively by the terms and conditions of this Agreement and may specify: (1) Honeywell Part number, including a general description of the Part; (2) requested delivery dates; (3) applicable price; (4) quantity; (5) location to which the Part is to be shipped; (6) location to which invoices will be sent for payment; and (7) packing instructions. Orders are subject to acceptance by Honeywell. Honeywell’s acknowledgment of Order receipt will not constitute acceptance. Any additional terms or terms conflicting with this Agreement will not apply unless specifically set forth in a separate written agreement between the Parties.

## 3. DELIVERY TERMS AND RISK OF LOSS

Delivery terms are EX WORKS (Incoterms 2000), Honeywell’s facility. Honeywell will schedule delivery in accordance with its standard lead-time unless (i) Buyer’s Order requests a later delivery date; or (ii) Honeywell agrees in writing to a separate delivery date. If Honeywell prepays transportation charges, Buyer will reimburse Honeywell upon receipt of an invoice for those charges. Title to the Part will pass to Buyer when Honeywell delivers Part to the carrier. Honeywell reserves the right to quote additional charges for any special routing, packing, labeling, storage, handling or insurance requested by Buyer.

## 4. TERMS OF PAYMENT

Payment is due thirty (30) calendar days from date of invoice. Payments must be made in U.S. currency. If Buyer is delinquent in its payment obligation to Honeywell, Honeywell may upon written notice to Buyer stop Work and withhold future shipments of Parts until all delinquent amounts and late interest, if any, are paid. Additionally Honeywell may at its option: (i) repossess Parts and Software for which payment has not been made; (ii) charge interest on delinquent amounts at a rate of one and one-half percent 1.5% per month or the maximum rate permitted by law, if lower, for each month or part thereof; (iii) recover all costs of collection including, but not limited to, reasonable attorneys’ fees; or (iv) combine any of the above rights and remedies as may be permitted by applicable law.

## 5. TAXES

Honeywell’s pricing excludes all taxes (including but not limited to, sales, use, excise, value-added, and other similar taxes), duties and charges. Buyer is responsible for all taxes, duties and charges resulting from this Agreement or as a result of Honeywell’s performance hereunder, whether now or hereafter imposed, levied, collected, withheld, or assessed.

## 6. PACKING

If, as part of the Order, Honeywell is responsible for packing any Parts for shipment, Honeywell will pack the Parts in accordance with Honeywell’s general packing instructions, suitable for air-ride vans only.

## 7. DELAYS (FORCE MAJEURE)

Except for payment obligations, neither Party will be liable to the other for any failure to meet its obligations due to any cause beyond the non-performing Party’s reasonable control.

## 8. INSPECTION AND ACCEPTANCE

Unless other acceptance criteria has been agreed to by the Parties under this Agreement the Buyer will inspect Parts and Software within a reasonable period after delivery not to exceed five (5) calendar days. Parts and Software will be presumed accepted unless Honeywell receives written notice of rejection explaining the basis for rejection within the same timeframe. Honeywell will have a reasonable opportunity to repair or replace rejected Parts or Software, at its option. Honeywell assumes shipping costs in an amount not to exceed normal surface shipping charges to Honeywell’s designated facility for the return of properly rejected Parts or Software. Following initial delivery, the Party initiating shipment will bear the risk of loss or damage to Parts or Software in transit. If Honeywell reasonably determines that rejection was improper, Buyer will be responsible for all expenses caused by the improper rejection.

## 9. SOFTWARE LICENSE

9.1. Buyer is solely responsible for obtaining any Software and appropriate Software license rights that may be required for use with any of the Parts delivered under this Agreement. No license or right, including sublicensing rights, either expressly, implicitly, by estoppel, conduct of the Parties, or otherwise, is granted by Honeywell to Buyer hereunder.

9.2. Protecting Integrity. Buyer may not directly or indirectly make any effort to deconstruct any Software that may be included in any form with any of the Parts delivered under this Agreement, including (but not limited to) translating, decompiling, disassembling, reverse assembling, reverse engineering, or performing any other operation on the Software to recover any portion of its contents. Buyer will take all reasonable actions necessary to prevent unauthorized access to, and disclosure, distribution, possession, alteration, reproduction, transfer, or use of the Software, and will train its employees, agents, and other persons who are permitted access to the Software to ensure compliance by Buyer with this Software license clause. Buyer will not use or disclose the Software, except as expressly authorized by this Agreement, and will hold all the Software in strict confidence. Buyer will not allow its contractors or consultants to access or use the Software without Honeywell’s prior written consent. Buyer must defend, indemnify and hold harmless Honeywell from all damages and third party claims, causes of action or damage arising from unauthorized use of Software.

## 10. WARRANTIES

10.1. Parts. Honeywell warrants that at time of shipment to Buyer its Parts will be free from defects in workmanship and material. This warranty is valid for twelve (12) months after shipment of the Parts.

10.1.1. Buyer must notify Honeywell in writing during the warranty period of a Nonconformance and, within 30 calendar days of discovery of the Nonconformance, return the Parts to Honeywell’s designated facility.

10.1.2. Honeywell’s obligation and Buyer’s sole remedy under this warranty is repair, replacement or a prorated refund of the purchase price based on the remaining time from the date of the written claim until the end of the warranty period, at Honeywell’s election, of any Part Nonconformance. All Parts repaired or replaced are warranted for the unexpired portion of the original warranty period.

10.1.3. For recycled Parts, Buyer must pay any labor expenses exceeding the cost of the recycled Parts for warranty Work under this clause.

10.1.4. Honeywell assumes round trip shipping costs for nonconforming Parts in an amount not to exceed normal surface shipping charges to and from Honeywell’s nearest warranty repair facility for the Parts. The Party initiating transportation will bear the risk of loss or damage to Parts in transit. If Honeywell reasonably determines after analysis of the returned Parts that a Nonconformance does not exist, then Buyer will pay all expenses related to the improper return including, but not limited to, analysis and shipping charges.

10.1.5. Honeywell has no obligation under this warranty for Parts unless Buyer maintains records that accurately document original shipment date, operating time, maintenance performed and the nature of the unsatisfactory condition of Honeywell Parts. Upon Honeywell’s request, Buyer will give Honeywell access to these records for substantiating warranty claims.

10.2. **Exclusion from Coverage:** Honeywell will not be liable under this warranty for Parts if the Part has been exposed or subjected to any:

10.2.1. maintenance, repair, installation, handling, packaging, transportation, storage, operation or use which is improper or otherwise not in compliance with Honeywell’s instruction;

10.2.2. moving or transferring Software from the device on which it was originally installed;

## **HONEYWELL PARTS ORDER TERMS AND CONDITIONS**

10.2.3. alteration, modification or repair by anyone other than Honeywell or those specifically authorized by Honeywell;

10.2.4. accident, contamination, foreign object damage, abuse, misuse, neglect or negligence after shipment to Buyer;

10.2.5. damage caused by failure of a Honeywell-supplied Part, recycled Part or Software not under warranty or by any hardware or Software not supplied by Honeywell;

10.2.6. use of counterfeit, recycled or replacement parts that are neither manufactured nor approved by Honeywell for use in Honeywell's manufactured Parts or systems;

10.2.7. defects or nonconformity attributable to any product or part not supplied or approved by Honeywell or not certified by Honeywell as a recycled Part; or

10.2.8. Parts that are normally consumed in operation or which have a normal life inherently shorter than the foregoing warranty period including, but not limited to, consumables (e.g. flashtubes, lamps, batteries, storage capacitors).

10.3. **Transferability:** These warranty rights are for the benefit of Buyer, its authorized successors, and assigns, but may not be assigned independently of the Licensed Software.

10.4. THESE WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, REPRESENTATIONS, CONDITIONS, GUARANTEES, OR OTHER TERMS AS TO SATISFACTORY QUALITY, WHETHER WRITTEN, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PARTICULAR PURPOSE.

### **11. LIMITATION OF LIABILITY**

IN NO EVENT WILL HONEYWELL BE LIABLE FOR ANY INCIDENTAL DAMAGES, CONSEQUENTIAL DAMAGES, SPECIAL DAMAGES, PUNITIVE DAMAGES, STATUTORY DAMAGES, INDIRECT DAMAGES, LOSS OF PROFITS, LOSS OF REVENUES, OR LOSS OF USE, EVEN IF INFORMED OF THE POSSIBILITY OF THESE DAMAGES. HONEYWELL'S LIABILITY FOR DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL IN NO CASE EXCEED THE ORDER PRICE FOR THE SPECIFIC PART OR SERVICE THAT GIVES RISE TO THE BREACH. TO THE EXTENT PERMITTED BY APPLICABLE LAW, THESE LIMITATIONS AND EXCLUSIONS WILL APPLY REGARDLESS OF WHETHER LIABILITY ARISES FROM BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING BUT NOT LIMITED TO NEGLIGENCE), BY OPERATION OF LAW, OR OTHERWISE.

### **12. PROPRIETARY INFORMATION**

12.1. The receiving Party shall keep all Proprietary Information disclosed hereunder confidential for a period of five (5) years following the date of disclosure. Each Party shall retain ownership of its Proprietary Information including, without limitation, all rights in patents, copyrights, trademarks and trade secrets. No right or license is granted hereby to either Party or its customers, employees or agents, expressly or by implication, with respect to the Proprietary Information or any patent, patent application or other proprietary right of the other Party, notwithstanding the expiration of the confidentiality obligations stated herein. Honeywell agrees to use the Proprietary Information of Buyer only to provide Parts, Software, systems or services for Buyer. Buyer agrees that it will not use or disclose Honeywell's Proprietary Information for any purpose besides the purchase or use of Parts, Software, systems or services hereunder. In particular and without limitation Buyer will not use Honeywell's Proprietary Information to provide services or for the development of Parts, Software or systems that are the subject of this Agreement or to cause such Parts, Software, systems or services to be provided, manufactured or procured from any other source.

12.2. The receiving Party may make a limited number of copies of the Proprietary Information as necessary to complete the Work. All copies made will reproduce the restrictive legends of the original. Upon termination of this Agreement or upon written request submitted by the disclosing Party to the receiving Party, the receiving Party must within thirty (30) days of the written request, return or destroy, at the disclosing Party's discretion all the disclosing Party's Proprietary Information and all copies. The receiving Party must destroy any of its documents into which the disclosing Party's Proprietary Information has been incorporated.

12.3. The receiving Party shall have no duty to protect information that is proven by written records to be: (i) known, publicly, at the time of disclosure or becomes publicly known through no fault of recipient, (ii) known to recipient at the time of disclosure through no wrongful act of recipient, (iii) received by recipient from a third party without restrictions similar to those in this section, or (iv) independently developed by the receiving Party.

### **13. COMPLIANCE WITH LAWS**

12.4. Buyer is responsible for compliance with all import and export control laws and regulations. Buyer will obtain import, export, and re-export approvals and licenses required for Parts, Software, transfers, services and technical data delivered and will retain documentation evidencing compliance with those laws and regulations.

12.5. Honeywell will not be liable to Buyer for any failure to provide Parts, Software, services, transfers or technical data as a result of government actions that impact Honeywell's ability to perform, including:

13.5.1. The failure to provide or the cancellation of export or re-export licenses;

13.5.2. Any subsequent interpretation of applicable import, transfer, export or re-export law or regulation after the date of any Order or commitment that has a material adverse effect on Honeywell's performance; or

13.5.3. Delays due to Buyer's failure to follow applicable import, export, transfer, or re-export laws and regulations.

12.6. If Buyer designates the freight forwarder for export shipments from the United States, then Buyer's freight forwarder will export on Buyer's behalf and Buyer will be responsible for any failure of Buyer's freight forwarder to comply with all applicable export requirements. Honeywell will provide Buyer's designated freight forwarder with required commodity information.

12.7. Buyer will not sell, transfer, export or re-export any Honeywell Parts, Software, services or technical data for use in activities that involve the design, development, production, use or stockpiling of nuclear, chemical or biological weapons or missiles, nor use Honeywell's Parts, Software, services or technical data in any facility that engages in activities relating to weapons or missiles. In addition, Honeywell Parts, Software, services or technical data may not be used in connection with any activity involving nuclear fission or fusion, or any use or handling of any nuclear material. Honeywell may approve the uses set forth in this paragraph in the event that Buyer, at no expense to Honeywell, provides Honeywell with insurance coverage, indemnities, and waivers of liability, recourse and subrogation acceptable to Honeywell.

### **14. CANCELLATION**

12.1. Either Party may terminate this Agreement and any or all unperformed Orders by giving written notice to the other Party upon the occurrence of any of the following events:

14.1.1. the other Party materially breaches this Agreement and fails to remedy the breach within 60 calendar days after receipt of written notice that specifies the grounds for the material breach;

14.1.2. the other Party fails to make any payment required to be made under this Agreement when due, and fails to remedy the breach within three calendar days after receipt of written notice of non-payment; or

14.1.3. any insolvency or suspension of the other Party's operations or any petition filed or proceeding made by or against the other Party under any state, federal or other applicable law relating to bankruptcy, arrangement, reorganization, receivership or assignment for the benefit of creditors or other similar proceedings.

12.2. Termination does not affect any debt, claim or cause of action accruing to any Party against the other Party before the termination. The rights of termination provided in this clause are not exclusive of other remedies that either Party may be entitled to under this Agreement or in law or equity.

### **15. APPLICABLE LAW AND FORUM**

This Agreement will be governed by the laws of the State of New York and the United States of America, without regard to conflicts of law principles. Honeywell and Buyer expressly agree to exclude from this Agreement the United Nations Convention on Contracts for the International Sale of Goods, 1980, and any successor thereto. The federal or state courts located within Phoenix, Arizona, USA will have exclusive jurisdiction to adjudicate any dispute arising out of or related to this Agreement.

### **16. ENTIRE AGREEMENT**

This Agreement contains the entire agreement between the Parties with respect to the subject matter hereof and supersedes any prior representations or agreements, oral or written, and all other communications between the Parties relating to the subject matter hereof. This Agreement will not be varied except by an instrument in writing subsequently executed by an authorized representative of each Party.