

HONEYWELL LIMITED (ACN 000 646 882) trading as 'Honeywell Security & Fire' TERMS AND CONDITIONS OF SALE

Australia

The following terms and conditions apply where Honeywell Limited (ACN 000 646 882) /a Honeywell Security & Fire ("**HSF**") supplies goods or services to a customer ("**Customer**").

1. Definitions

For the purpose of these Conditions and unless the context otherwise requires:

"Australian Consumer Law" means the Australian Consumer Law set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth), as supplemented or amended.

"Conditions" means these Terms and Conditions of Sale.

"Contract" means the contract formed in accordance with clause 2.1, consisting of HSF's proposal (if any), the relevant invoice and these Conditions and where applicable, Special Conditions of Subcontract relating to the Code and Guidelines.

"Equipment" means equipment manufactured by HSF or its affiliates.

"Errors" means the failure of Goods to perform a function as described in the HSF proposal, the HSF functional specification for those Goods, the appropriate HSF user manual or HSF product literature as the case may be.

"Goods" means Equipment or Software.

"GST" means the tax imposed by the *A New Tax System (Goods & Services) Act 1999* (Cth) and related imposition Acts of the Commonwealth.

"Index" means the average weekly earnings measure (as per ABS No. 6302, Series No. A594406R [or such other ABS reference as may be substituted for the measure]) or in the event that this Index is discontinued, the Australian Bureau of Statistics index that most reflects the Index's constituents.

"Loss or Damage" includes all types of property, pecuniary or other loss or damage, including consequential loss or damage and loss of profits.

"Non-HSF Goods or Services" means equipment, documentation, product literature, labour, knowledge, service or computer programs in machine readable form that is supplied, manufactured, installed or provided by a person other than HSF.

"Person" includes a corporation.

"Services" means HSF labour or service.

"Software" means computer programs developed by HSF or its affiliates in the form of machine readable instructions and any documentation or product literature relating to those computer programs.

"System" may include HSF equipment and software and Non-HSF Goods or Services.

2. Contract Formation

2.1 Subject to clause 2.3, a binding agreement will form between the parties:

- (a) if these Conditions form part of a proposal to Customer, on receipt by HSF of Customer's unconditional acceptance of the proposal, evidenced by Customer's purchase order whether or not the proposal is referenced; or
- (b) otherwise, on HSF's written acceptance of Customer's purchase order; and the Contract will constitute the entire contract between the parties in connection with the sale of Goods and Services.

2.2 Any proposal incorporating these Conditions:

- (a) will not be valid after 30 days of its date, unless otherwise agreed by HSF; and
- (b) may be varied or withdrawn by HSF at any time prior to unconditional acceptance by Customer.

2.3 No modifications or variation of the Contract (including any statement by Customer that Customer's terms will apply) shall bind HSF unless expressly agreed to in writing by an authorised representative of HSF. HSF will not be deemed to have waived these Conditions if it fails to object to provisions submitted by Customer.

2.4 These Conditions will prevail in relation to the supply of Goods and Services to the extent of any inconsistency between these Conditions and any other documentation agreed by HSF under clause 2.3.

3. Express Warranty

3.1 Subject to these Conditions, HSF hereby expressly warrants that:

- (a) Goods manufactured by HSF in its Baulkham Hills, New South Wales facility shall be free from Errors for thirty six (36) months from date of supply or installation (whichever is the earlier) of the Goods (the Goods Warranty Period). Any Non-HSF Goods sold by HSF, but not manufactured by HSF, will be provided with the same warranty as provided by the original manufacturer; and
- (b) Services performed by HSF shall be free from Errors for twelve (12) months from the date of performance of the Services (Services Warranty Period).

3.2 HSF will if any Errors occur in Goods, during the Goods Warranty Period, at its election, either:

- (a) in the case of Equipment,
 - (i) replace the Equipment or supply equivalent equipment FOB at HSF's facility; or
 - (ii) repair the Equipment; or
 - (iii) pay the cost of replacing the Equipment; and
- (b) in the case of Software,
 - (i) repair, modify or make good the Software; or
 - (ii) make available to Customer instructions to enable Customer to repair, modify or make good the Software; or

3.3 Subject to these Conditions, and only in relation to any Services provided by HSF to a Customer who is not a consumer as defined by the Australian Consumer Law, HSF hereby expressly warrants that for three (3) months from date of provision, the Services shall be free from Errors. HSF will if any Errors occur in Services, during the Services Warranty Period, at its election, either:

- (a) supply the Services again; or
 - (b) pay the cost of having the Services supplied again.
- 3.4 Clauses 3.1, 3.2 and 3.3 will not apply to Errors attributable to:
- (a) Non-HSF Goods or Services;
 - (b) any modification or repair of Goods unless made by HSF or with HSF's prior written approval;
 - (c) negligent use, abuse or misuse of Goods;
 - (d) the use of Goods under environmental, power or operating conditions beyond the limits or constraints specified by HSF;
 - (e) the installation or wiring of any Goods other than in accordance with HSF's instructions;
 - (f) the use of any Goods with any Non-HSF Goods or Services; or
 - (g) wear or burn-out resulting from usage of goods of a kind inherently susceptible to burn-out.

3.5 HSF authorises Customer to pass on the express warranties contained in clauses 3.2(a) and (b) (as applicable) to end users who purchase Goods from Customer, provided that:

- (a) Customer is not authorised to, and must not purport to, pass on to such end-users any warranty rights greater than, or different to, those granted by HSF in clause 3.2(a) or (b) (as relevant); and
- (b) if Customer wishes to pass on the warranty rights granted in clause 3.2(a) or (b) in writing, Customer must provide HSF with a copy of the document which it proposes to use for this purpose for review and written approval by HSF before such document is provided to the end-user.

3.6 Our Goods come with guarantees that cannot be excluded under the Australian Consumer Law. Customer is entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable Loss or Damage. Customer is also entitled to have the Goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.

3.7 This clause 3 states HSF's total responsibility and liability, and Customer's sole remedy in respect of the Goods and Services. In no event will HSF be liable for any incidental, consequential, special, or indirect damages, even if informed of the possibility of such damages and notwithstanding the failure of the essential purpose of any limited remedy. No extension of this warranty will be binding upon HSF unless set forth in writing and signed by HSF's authorised representative.

4. Limitation of Liability

4.1 To the full extent permitted by law and subject to clauses 3.1, 3.2 and 4.2:

- (a) HSF makes no warranty and will not be liable for any breach of statutory obligation or implied condition or warranty in respect of Goods and Services or the materials used, Systems or results of any process with which the Goods and Services are used or integrated;
- (b) HSF shall under no circumstances be liable in any way whatsoever to Customer for any Loss or Damage sustained or incurred by Customer or any other party arising directly or indirectly out of the supply of Goods or Services by HSF, the use or performance of Goods or Services in isolation or as part of a System, any breach by HSF of the Contract, or negligence of HSF. HSF's liability to the Customer, if any, in contract, tort or otherwise will be reduced to the extent the Customer contributed to the Loss or Damage;
- (c) HSF does not make any representations or give any warranty as to the overall performance of any System or the results of any process with which the Goods or Services are used or integrated; and
- (d) the express warranties in clauses 3.1 and 3.2 is in substitution for all other terms, conditions, warranties and representations, implied by

- statute or otherwise, and all other terms, conditions, warranties and representations are excluded.
- 4.2 Where the Australian Consumer Law imposes statutory consumer guarantees in respect of Services provided by HSF to the Customer, and the Services are of a kind not ordinarily acquired for personal, domestic or household use or consumption, then the Customer's remedies for breach of any such statutory consumer guarantee shall be limited to, at HSF's election:
- re-supply of the Services; or
 - payment of the cost of having the Services supplied again.
- 4.3 This clause 4 will survive termination or completion of the Contract.
- 5. Price and Terms of Payment**
- 5.1 Unless stated otherwise in writing, all prices quoted by HSF, are exclusive of all taxes, (including any GST), duties, levies and any other government charges, and where applicable shall be added to the price payable by the Customer to HSF. When GST is payable by HSF in respect of a taxable supply made by HSF to the Customer, the Customer shall pay HSF, in addition to the GST-exclusive price, the amount on account of GST shown in the tax invoice rendered by HSF.
- 5.2 Unless stated otherwise in writing, all prices quoted by HSF, are based on the factory or supplier price list as held by HSF at date of proposal and also on rates of duty and primary wages and salaries, freight insurance and exchange rates prevailing at the date of the proposal. Any increase in price resulting from variation in any of these factors shall be payable by Customer. All prices are quoted based on HSF's terms and conditions; to the extent Customer's terms and conditions are deemed to apply, HSF reserves the right to modify all prices according to the additional level of risk and responsibility that Customer's terms and conditions require HSF to undertake. Additionally, thirty (30) days prior to the expiry of the first term of this Contract or such other time as nominated by HSF and every anniversary thereafter, HSF may give to the Customer notice in writing that the price of the Goods or Services shall increase. In the absence of such notice, prices quoted by HSF shall increase in accordance with the Index or by 5%, whichever is the greater.
- 5.3 HSF reserves the right to raise and be paid for progress claim invoices on the Customer. Progress claim invoices may be raised upon the supply of Equipment Services or Software to Customer or to some other place agreed or upon the completion of agreed benchmarks or other measure as agreed between Customer and HSF.
- where HSF has Goods ready for supply in accordance with a delivery schedule agreed between HSF and Customer, but Customer is not able to adhere to that delivery schedule, then HSF may invoice Customer in accordance with that delivery schedule. In the absence of an agreed delivery schedule, the current HSF delivery schedule, as provided to Customer, shall be deemed to be the delivery schedule.
 - Goods paid for by Customer under sub-clause 5.3 will be held for Customer under HSF's custody, care and control and will be insured by HSF for fire and burglary at replacement value.
- 5.4 Except as otherwise agreed, invoices will be raised by HSF upon the supply of Equipment, Services or Software.
- 5.5 Subject to approval of Customer's credit by HSF, all charges shall be due and payable and paid by Customer to HSF within thirty (30) days from date of invoice. Where HSF has not approved Customer's credit, all charges shall be due and payable and paid by the Customer to HSF upon delivery of Goods or Services.
- 5.6 All payments shall be in Australian legal currency.
- 5.7 Any moneys for which an account or invoice has been furnished to Customer, and which remain unpaid for ninety (90) days after the due date for payment shall, at HSF's option, bear interest as from the date upon which payment is due at the prevailing commercial overdraft rate of HSF's then current bank.
- 6. Risk and Title**
- 6.1 Property and ownership in Equipment will not pass to the Customer but will remain in HSF until the purchase price of the Equipment has been paid in full.
- 6.2 Until property in the Equipment passes to the Customer:
- the Customer shall hold the Equipment as fiduciary bailee and agent for HSF;
 - unless otherwise notified in writing, the Customer is authorised to sell or use the Equipment in the ordinary course of business;
 - after giving 48 hours notice to the Customer, HSF shall be entitled to enter the Customer's premises between 9am and 5pm to inspect the Equipment;
 - the Equipment shall be stored separately and in a manner to enable them to be identified and cross-referenced to particular invoices;
 - if the Customer sells or uses the Equipment in a manufacturing or value added process of its own or a third party, then the Customer shall hold such part of the proceeds of the sale, manufacturing or value added process as relates to the Equipment in trust for HSF. Such part shall be deemed to equal in dollar terms the amount owing by the Customer to HSF for these Equipment at the time.
- 6.3 If the Customer:
- fails to make payments for the Equipment on the due date; or
 - commences to be wound up or is placed under official management or suffers a receiver or manager to be appointed or becomes insolvent or bankrupt or commits an act of bankruptcy,
- the Customer will deliver the Equipment to HSF upon demand. In the event the Customer does not comply with a demand within 48 hours of receipt, HSF shall be entitled to enter upon the Customer's premises at any time to do all things necessary in order to take possession of the Equipment. The Customer will also pay on demand all costs associated with the exercise of HSF's rights under this clause.
- 7. Retention of Title and PPSA**
- 7.1 Title**
- All Goods supplied in accordance with the terms of this Contract or any other agreement between HSF and the Customer remain HSF's property until the Customer has paid in full all moneys that the Customer owes to HSF from time to time.
 - If the Customer purchases Goods for re-supply, then the Customer may sell the Goods in the ordinary course of business but must hold all proceeds from any such sale in trust for HSF.
- 7.2 Registration of security interest**
- For supplies made in Australia, terms in this clause 7.2 that are defined by the *Personal Property Securities Act 2009* (PPSA (Australia)) have the same meaning in this clause.
 - For supplies made in New Zealand, terms in this clause 7.2 that are defined by the *Personal Property Securities Act 1999* (PPSA (NZ)) have the same meaning in this clause.
 - The Customer agrees and acknowledges that:
 - for the purposes of the PPSA, HSF has a security interest in the Goods and in all proceeds from disposal of the Goods; and
 - HSF may register its security interest under this clause 7.2 including as a purchase money security interest.
- 7.3 Undertakings**
- The Customer agrees:
 - to the maximum extent permitted by law, to waive any right to receive a verification statement under the PPSA in respect of the security interest under this clause 7;
 - to do all things HSF considers necessary or desirable to ensure that HSF's security interest in the Goods is enforceable, continuously perfected and afforded the highest priority position available to HSF;
 - to indemnify, and on demand reimburse HSF for all expenses incurred in registering a financing statement or financing change statement on the Personal Properties Securities Register or releasing any Goods the subject of the security interest; and
 - to give HSF ten (10) Business Days' prior written notice of any proposed change in the Customer's name and/or any other change in the Customer's details (including but not limited to changes in the Customer's address, facsimile number, email address, or business practice) and immediately advise HSF of any material change in the Customer's business practices of selling or using any of HSF's products subject to the security interest which would result in a change in the end products produced or the nature of proceeds derived from such sales.
- 7.4 Confidentiality**
- The parties agree neither party will disclose any information of the kind mentioned in section 275(1) of the PPSA (Australia) or section 177 of the PPSA (NZ), unless the Customer or HSF are otherwise required to disclose such information under the PPSA Australia or PPSA NZ (as applicable).
- 8. Delay**
- 8.1 It is contemplated that any Goods or Services to be supplied by HSF will be supplied during regular working hours on regular working days. If for any reason Customer requests HSF to supply Goods or Services outside regular working hours, any overtime or additional expenses occasioned thereby shall be invoiced to and paid by Customer to HSF as part of the purchase price for such Goods or Services, at HSF's then current labour rates to customers.
- 8.2 Extra costs incurred by HSF due to cessation of work occasioned by Customer's instructions or lack of instructions, by interruptions, mistakes, or work for which HSF is not responsible shall be reimbursed by Customer to HSF upon demand. Extra costs incurred by HSF due to occurrences under clause 9 and sub-clause 9.2 in these terms and conditions shall be reimbursed by Customer to HSF upon demand.
- 9. Work to be done by others**
- 9.1 Without prior written agreement with Customer to the contrary, HSF will not set

in place or install equipment or services piping nor carry out any electric wiring work, welding or entry into process lines, or building work such as concreting, cutting and making good, or painting. Such work shall be the responsibility of the Customer and at its expense and shall not be the responsibility of HSF.

- 9.2 HSF will not set the cut out or operating points of safety devices unless under the supervision and at the sole responsibility of Customer.
- 9.3 HSF will not provide lifting machinery, scaffolding, toilets or other site amenities.
- 10. Delivery, etc.**
- 10.1 Delivery of Goods not agreed to be installed by HSF shall be FOB a HSF warehouse or HSF affiliated or office selected by HSF.
- 10.2 The delivery times made known to Customer are estimates only and HSF does not accept any responsibility for delays whether caused by fire, strike, lockout, dispute with workmen, delays caused by suppliers or others, flood, accident, transportation delays, fuel shortage, inability to obtain material, war, demand or requirement of Government or statutory authorities or any other cause beyond its control. In event of any delay, the date or dates for performance of this contract by HSF shall be extended for a period at least equal to the time lost by reason of the delay or the delays subsequently caused therefrom.
- 10.3 If the Goods or Services ordered by Customer are unable to be supplied to Customer by the scheduled delivery date, HSF will notify Customer and with Customer's consent, HSF may substitute equivalent goods or services in place of the Goods and Services ordered by Customer, in order to satisfy Customer's order.
- 11. Loss of or Damage to Goods**
- 11.1 To the extent permitted by law and subject to clause 4.1(b), in the case of Goods not agreed to be installed by HSF, HSF shall not be liable for any loss of or damage to the same after delivery FOB point of shipment, including any Loss or Damage in transit;
- 11.2 To the extent permitted by law and subject to clause 4.2, in the case of Goods agreed to be installed by HSF, HSF shall not be responsible for loss of or damage to goods, after those Goods have been delivered to the site. Should any Goods after being delivered and prior to payment by Customer be damaged or destroyed in any way whatsoever, other than by the fault of HSF, Customer agrees promptly upon demand to pay or reimburse HSF. In addition to and apart from any and all other sums due to or to become due to HSF under these terms and conditions, an amount equal to the Loss or Damage so occasioned.
- 12. Claims**
- Goods supplied shall be examined by Customer promptly upon delivery. To the full extent permitted by law and subject to clauses 3.1, 3.2 and 4.2, no claim will be recognised by HSF unless such claim is reported to HSF within seven (7) days after delivery of the Goods to which the claim relates.
- 13. Return of Goods**
- 13.1 Subject to clauses 13.2 and 13.3, Goods may be returned for credit if they do not correspond with the description under which they were sold.
- 13.2 No Goods may be returned for credit unless HSF's written approval has been first obtained and the original invoice number and date have been quoted for reference.
- 13.3 Only Goods of current design in original sealed cartons, will be considered for credit, and a handling charge will be levied by HSF and paid by Customer to cover necessary inspection, adjustment, repacking and clerical work. Goods invoiced more than three (3) months prior to attempted return, Goods which are special in any nature whatsoever, software wirings and tubing cut to length and goods bought in to special order may not be returned.
- 14. Variations**
- Subject to its statutory obligations in relation to the supply of services under the Australian Consumer Law, HSF reserves the right to revise at any time the extent or type of goods or services it supplies to the Customer, if it believes that other goods or services supplied by HSF can fulfil the same function.
- 15. Dispute Resolution**
- 15.1 The parties agree that if a dispute arises out of or relates to the Contract, a party may not commence any court or arbitration proceedings relating to the dispute unless it has complied with the provisions of this clause 15, except to seek urgent interlocutory relief.
- 15.2 A party claiming that a dispute has arisen must give written notice to the other party specifying the nature of the dispute. On receipt by the other party of the notice, the matter must be referred to the senior management of each party for resolution. If the managers are unable to resolve the dispute within ten business days, the parties must mediate the dispute under the mediation rules of the Law Society of New South Wales and the President of the Law Society or the President's nominee will select the mediator and determine the mediator's compensation.
- 16. Software Licence**
- HSF agrees to grant to Customer a licence to use any Software provided pursuant to the Contract, upon and subject to the terms and conditions set out in HSF's standard Software License Agreement which Customer shall execute prior to delivery or installation of such Software.
- 17. Governing Law**
- These Conditions are governed by the laws of New South Wales, Australia. Each party submits to the non-exclusive jurisdiction of the courts of NSW and the courts which hear appeals from those courts.
- 18. Indemnity**
- Customer agrees to indemnify HSF, its employees and agents and each of them from and against all Loss or Damage, resulting directly or indirectly from any acts, errors or omissions of Customer in connection with the Contract or the use, possession, operation of the Goods or Services. This clause will survive termination or completion of the Contract.
- 19. Intellectual Property**
- Subject to clause 16, nothing in these Conditions shall confer on Customer any licence, right, title or interest in or to any intellectual property comprised in the Goods or Services, which will at all times remain the property of HSF or its suppliers.