

## UNITED STATES TERMS AND CONDITIONS OF SALE

### 1. APPLICABILITY.

These United States Terms and Conditions of Sale (“Terms”) apply to the purchase by the buyer (“Buyer”) from seller (“Seller”) of hardware and equipment manufactured by the Seller (“Equipment”), software developed by the Seller (“Software”), hardware and software manufactured or developed by a third party (“Third Party Products,” and together with Equipment and Software, “Products”), and services provided by the Seller (“Services”), each of which is identified in the accompanying quotation, credit application, proposal, order acknowledgement, or invoice (the “Sales Confirmation”). These Terms and the Sales Confirmation comprise the entire agreement between the parties (collectively, the “Agreement”), except as hereafter modified by Seller in writing and signed by Seller’s representative (including any applicable dealer, reseller, distributor, sales representative, or similar agreement between Buyer and Seller) (a “Superseding Agreement”). Buyer accepts these Terms by signing and returning Seller’s quotation, by sending a purchase order in response to the quotation, by submitting instructions to Seller to ship the Product or by accepting or paying for the Product or Service. No additional or different terms, conditions or warranties other than those identified in the quotation and no agreement or understanding, oral or written, in any way purporting to modify the terms and conditions, whether contained in Buyer’s purchase order or shipping release forms, or elsewhere, shall be binding on Seller unless hereafter made in writing, signed by Seller’s authorized representative, and specifically referencing these Terms and stating that it modifies them. Buyer is hereby notified of Seller’s express rejection of any terms inconsistent with these Terms or to any other terms proposed by Buyer. Neither Seller’s subsequent lack of objection to any terms, nor the delivery of the products or services, shall constitute an agreement by Seller to any such terms. Trade custom, trade usage and past performance are superseded by these Terms and shall not be used to interpret these Terms.

### 2. PRICE; PAYMENT.

a. Prices for Products covered by this Agreement may be adjusted by Seller, upon notice to Buyer at any time prior to shipment and regardless of the acceptance or issuance of a Sales Confirmation, to reflect any increase in Seller’s cost of raw materials, components (e.g., steel, aluminum, electronic components), inability to secure Products, changes in law, labor, taxes, duties, tariffs or quotas, acts of Government, any similar charges, or to cover any extra, unforeseen and unusual cost elements

b. All stated prices are exclusive of any taxes, fees, duties, and levies, however designated or imposed, including but not limited to value-added and withholding taxes that are levied or based upon the amounts paid under these Terms (collectively, “Taxes”). Any Taxes related to the Products and Services purchased pursuant to these Terms are the responsibility of Buyer (excluding taxes based on Seller’s net income), unless Buyer presents an exemption certificate acceptable to Seller and the applicable taxing authorities. If possible, Seller will bill Taxes as a separate item on the invoice presented to Buyer. In the event Seller is required to pay any such taxes or other charges, Buyer shall reimburse Seller therefor on demand. If any exemption certificate presented by Buyer is held to be invalid, then Buyer will immediately pay Seller the amount of the Tax and any penalties and interest related thereto.

c. All payment terms set forth in these Terms are subject to Seller’s approval of Buyer’s credit, in Seller’s discretion; if such approval is withheld, payment will be due in advance of Seller’s performance on the date set forth in the Sales Confirmation. Unless otherwise set forth in the Sales Confirmation, Buyer will pay all invoiced amounts within thirty (30) days following the date of Seller’s invoice. Unpaid amounts will accrue interest at a rate equal to the lesser of one and one-half percent (1.5%) per month and the maximum rate permitted by applicable law, from the applicable due date until paid, plus Seller’s reasonable costs of collection. Seller reserves all other rights granted to a seller under the Uniform Commercial Code (“UCC”) (or equivalent law in the applicable jurisdiction) for Buyer’s failure to pay for the Products, Services or any other breach by Buyer of these Terms. In addition to all other rights and remedies available to Seller (which Seller does not waive by the exercise of any rights hereunder), Seller may suspend the delivery of any Products or Services if Buyer fails to pay any amounts by the applicable due date and the failure continues for five (5) days following Buyer’s receipt of notice thereof. Buyer may not withhold payment of any amounts due and payable as a set-off of any claim or dispute with Seller, regardless of whether relating to Seller’s breach, bankruptcy, or otherwise. All purchases and related payments will be in US Dollars unless otherwise stated on the applicable Product or Service price list or Sales Confirmation. Invoicing disputes must be identified in writing within 21 days of the date of invoice. Payments of any disputed amounts are due and payable upon resolution. The Parties shall seek to resolve any such disputes expeditiously and in good faith within 21 days of the dispute notice. All other amounts remain due within 30 days.

d. Buyer’s entitlement to receive any rebate or other incentive that Seller may offer from time to time shall be conditioned on Buyer timely paying all invoices and other amounts owed by Buyer to Seller during the period to which the rebate or other incentive relates. In the event that Buyer provides a payment without designating the

invoice(s) to which such payment is to be applied, Seller may apply such payment to such invoice(s) or other amounts owing by Buyer to Seller as Seller may determine in its sole discretion.

d. In the event that Buyer does not use any portion of a credit (including any rebate credit) within ninety (90) days of its issue date, then Seller shall be entitled to apply such credit against any invoice(s) or other amounts owing by Buyer to Seller. All credits (including rebate credits) shall expire if not used within one hundred eighty (180) days of the credit issue date.

### **3. DELIVERY; SHIPPING.**

a. Seller will deliver or make available the Products within a reasonable time after receiving Buyer's purchase order, subject to their availability. The delivery date provided by Seller for the Products is only an estimate and is based upon prompt receipt of all necessary information from Buyer. If Buyer causes Seller to delay shipment or completion of the Products, Seller will be entitled to any and all extra costs and expenses resulting from the delay. Seller will not be liable for any delays, loss, or damage in transit, and failure to deliver within the time estimated will not be a material breach of contract on Seller's part. Seller will use commercially reasonable efforts to make shipments as scheduled.

b. Unless otherwise agreed in the Sales Confirmation or otherwise agreed in writing by the parties, Seller will deliver the Products, EXW (Incoterms® 2020) Seller's plant or factory (the "Delivery Location"), using Seller's standard methods for packaging and shipping same. Buyer will take delivery of the Products within three (3) days of Seller's notice that the Products have been delivered to the Delivery Location. If Buyer fails to take delivery of the Products within this three (3) day period, Buyer will pay Seller for the Products and all storage expenses incurred by Seller or, in Seller's discretion, Seller may ship the Products to Buyer at Buyer's expense. Seller may, in its sole discretion, without liability or penalty, make partial shipments of Products to Buyer. Each shipment will constitute a separate sale, and Buyer will pay for the units shipped whether the shipment is in whole or partial fulfillment of Buyer's purchase order. Buyer is responsible for obtaining any import licenses and other consents required for a Product shipment at its own expense, and will provide the licenses and consents to the Seller before shipment. Claims for loss or damage to Products in transit must be made to the carrier and not to Seller.

c. The quantity of any installment of the Products, as recorded by Seller on the dispatch from Seller's place of business, is conclusive evidence of the quantity received by Buyer upon delivery, unless Buyer provides conclusive evidence to the contrary. Seller will not be liable for any non-delivery of the Products to the Delivery Location, unless Buyer gives written notice to Seller of the non-delivery within five (5) days following the date that Buyer would, in the ordinary course of business, have received the Products. Seller's liability for any non-delivery of the Products will be limited to replacing the Products within a reasonable time or adjusting the invoice for the Products to reflect the actual quantity delivered, at the Seller's option.

d. If the Products ordered are to be exported from the United States (US), the quoted shipping dates are subject to all export documents and authorizations. Regardless of ultimate destination, the prices quoted are based on packing for domestic shipment unless otherwise stated in writing. Buyer agrees to provide Seller in writing with the ultimate destination, end-use and identity of the end-user at the time the order is placed if the Products are to be exported. Seller reserves the right to choose the freight forwarder, carrier, and/or broker. Buyer acknowledges and agrees that it shall be responsible for compliance with any chemical registration or importation requirements of any country into which it seeks to import the Products. The Buyer of items is solely responsible for complying with applicable US export laws. Seller shall not be the importer of record and is not responsible for compliance with importation requirements of any country to which the Products are shipped.

### **4. TITLE; RISK OF LOSS.**

a. Risk of loss or damage passes to Buyer upon delivery to the carrier. If Buyer fails to accept delivery of any of the Products on the date set forth in Seller's notice that Seller has delivered the Products to the Delivery Location, or if Seller is unable to deliver the Products to the Delivery Location on the date because Buyer has failed to provide appropriate instructions, documents, licenses, or authorizations, then: (i) the Products will be deemed to have been delivered to Buyer; and (ii) Seller, at its option, (A) may store the Products until Buyer takes possession of them, at which time Buyer will be liable for all costs and expenses resulting therefrom (including but not limited to the cost of storage and insurance), or (B) ship the Products to Buyer, at Buyer's cost and expense.

b. Title to Equipment and hardware manufactured by a third party ("Third Party Hardware") passes to Buyer upon delivery of Equipment and/or Third Party Hardware to the Delivery Location. Unless Buyer has prepaid for the Equipment or Third Party Hardware, the Equipment and Third Party Hardware in Buyer's inventory shall be subject

to a security interest of Seller in the Equipment and Third Party Hardware until Seller receives full payment from Buyer. Seller may, in its reasonable discretion, register such security interest in Equipment and Third Party Hardware and their sale proceeds pending payment in the applicable official registers of any national or local jurisdiction where Equipment and/or Third Party Hardware are delivered or physically located. Promptly upon Seller's request, Buyer shall execute all documents and take all actions as Seller reasonably directs at Seller's expense to enable Seller to exercise its security rights under this Section. Title to any software licensed to Buyer under these Terms will remain with Seller and its suppliers and licensors and is provided under the terms of the applicable EULA (as hereinafter defined).

## **5. INSPECTION; REJECTION OF PRODUCTS.**

a. As used in this Section, "Nonconforming Products" means only the following: (i) the items shipped are different from those identified in Buyer's purchase order; or (ii) the labels or packaging of the items incorrectly identifies them. Buyer will inspect the Products within five (5) days following receipt thereof (the "Inspection Period"). The Products will be deemed accepted at the end of the Inspection Period unless Buyer notifies Seller in writing of any Nonconforming Products and furnishes Seller with written evidence or other documentation reasonably required by Seller.

b. If Buyer notifies Seller of any Nonconforming Products prior to expiration of the Inspection Period, then Seller will, in its sole discretion, (i) replace the Nonconforming Products with conforming Products, or (ii) credit or refund the purchase price for the Nonconforming Products, together with any reasonable shipping and handling expenses incurred by Buyer. At Seller's request and direction, Buyer will return the Nonconforming Products at Seller's expense or dispose of the Nonconforming Products in a manner approved by Seller, and upon request Buyer shall provide Seller with a certificate of destruction of such Nonconforming Products. Upon receipt of the Nonconforming Products, Seller will promptly refund the monies owed or ship the replacement Products to the Delivery Location at Seller's expense, with Seller retaining the risk of loss until delivery.

c. Buyer acknowledges and agrees that the remedies set forth in this Section are Buyer's exclusive remedies and Seller's sole liability for the delivery of Nonconforming Products, and except as set forth in this Section, Buyer has no right to return the Products to Seller without Seller's written authorization.

## **6. LIMITED WARRANTY.**

a. Generally: Unless otherwise specified by Seller in separate written product warranty accompanying the Equipment or specified in the applicable Equipment price list (in which case such other product warranty term shall control), Seller warrants to Buyer that the Equipment will be free from defects in material and workmanship for one (1) year from the original delivery date of the Products from Seller to Buyer (the "Warranty Period"). If, prior to the expiration of the Warranty Period, Equipment fails to conform to this Limited Warranty and Buyer informs Seller in writing of such nonconformance, then Seller will either (i) repair or replace the defective Equipment or (ii) in Seller's sole and exclusive discretion, refund the amount that Buyer paid for such defective Equipment at time of original purchase, which amount shall pro-rated for Warranty Periods greater than one (1) year. Repair or replacement may be made with new or refurbished Equipment or component parts (at Seller's option) or, if Seller no longer sells the applicable Equipment, with a similar Equipment of like function. Buyer shall bear the costs of access, de-installation, reinstallation and transportation of the Equipment to Seller and back to Buyer. Any repair or replacement pursuant to this Limited Warranty shall not extend the Warranty Period.

b. Conditions to Limited Warranty: This Limited Warranty and remedy are expressly conditioned upon: (i) Buyer's proof of payment of the purchase price in full; and (ii) Buyer giving written notice of the defect, reasonably described, to Seller within ten (10) days of the time when Buyer discovers or ought to have discovered the defect.

c. What This Limited Warranty Does Not Cover: The foregoing Limited Warranty does not apply to (i) consumable Equipment and components (e.g., batteries, filters, belts and kits); (ii) Equipment subjected to misuse, neglect, accident or improper installation; (iii) Equipment damaged by disaster (e.g., fire, flood, wind, earthquake or lightning) or other causes beyond the control of Seller (e.g., excessive voltage, mechanical shock or water damage) (iv) Equipment whose defect has been caused by alteration or repair by anyone except Seller or Seller's authorized representatives; (v) normal wear and tear; (vi) Equipment not manufactured by Seller or bearing its nameplate ("Other Equipment"); (vii) any Equipment manufactured or customized according to Buyer's specifications; (viii) Equipment that Buyer cannot reasonably evidence have been stored, installed, operated, used or maintained other than in compliance with Seller's published specifications and instructions; (ix) Equipment purchased through other than a Seller authorized channel; (x) any software (any such software being warranted under the terms of the end user license agreement included with the Equipment or, if none, the terms of the general end user license agreement

found at <http://www.johnsoncontrols.com/techterms>); and (xi) Equipment that is subject to a separate written warranty (“Other Warranty”) accompanying the Equipment, included in the applicable Equipment documentation or set forth in the applicable Equipment price list (which Other Warranty governs). Other Equipment may be covered by warranties by other manufacturers, suppliers, or publishers, which Seller may assign or pass through to Buyer, without recourse to Seller, to the extent allowable by the other manufacturers, suppliers or publishers.

d. How to Make a Warranty Claim: Buyer must notify Seller of any warranty claims and request a Return Material Authorization (“RMA”) by contacting (i) Buyer’s place of purchase (e.g., Seller’s branch, retailer, distributor or wholesaler) or (ii) Seller’s customer support organization for the applicable Johnson Controls Equipment line. Returned Equipment will only be accepted if the RMA is included with the returned Equipment, and Equipment returned without a proper RMA will be returned to Buyer at Buyer’s expense. If Seller provides services that are incidental to the sale of the Equipment, such as installation, training and start-up (“Services”), Seller warrants to Buyer that it will perform the Services in a professional, workman-like manner. Seller will re-perform any non-conforming Services for no charge, as long as Buyer provides written notice to Seller within five (5) days following completion of the Services. The limited remedies described herein are the sole and exclusive remedy and Seller’s sole responsibility under this Limited Warranty.

## **7. INTELLECTUAL PROPERTY.**

Buyer acknowledges Seller and its affiliates are the owners or licensors of brands, trademarks, designs, patents, copyrights and other intellectual property relating to Seller’s Products, and that no right or license is conveyed by Seller to Buyer to manufacture, have manufactured, modify, import or copy such Products. Buyer agrees that it will reference brands of Seller or its affiliates only in connection with the use or sale of Products delivered to Buyer hereunder, and not in connection with the sale of any other Product, except as separately authorized by Seller in writing. Buyer further agrees that it will not, directly or through intermediaries, reverse engineer, decompile, or disassemble any software (including firmware) comprising or contained within a Product, except and only to the extent that such activity may be expressly permitted, notwithstanding this limitation, either by applicable law or, in the case of open source software, the applicable open source license.

## **8. DATA, DATA ACCESS AND CYBERSECURITY.**

Buyer acknowledges and agrees to the collection, processing and international transfer of personal data and information related to the business relationship between Buyer and Seller (“Data”) for its general business purposes, including but not limited to providing Buyer with service/product recommendations, benchmarking, energy monitoring, maintenance and support, and marketing to Buyer (collectively, “Business Purposes”). Seller shall be the exclusive owner of all Data. Seller may anonymize Data so that Buyer is not readily identifiable (the “De-Identified Data”). Seller shall have the right and ability to use the De-Identified Data for its Business Purposes. In the event Seller does not own or is unable to own the De-Identified Data as a result of applicable law, or contractual commitments or obligations, Buyer grants Seller a non-exclusive, perpetual, irrevocable, fully-paid-up, royalty free license to use, copy, distribute, and otherwise exploit statistical and other aggregated data derived from Buyer’s use of the De-Identified Data for Business Purposes. Buyer further acknowledges that Buyer has read and understood the Seller’s Privacy Notice at: [www.johnsoncontrols.com/privacy](http://www.johnsoncontrols.com/privacy). Where required under law, and to the extent required, Buyer provides consent to the processing and transfer according to the Seller’s Privacy Notice, and further confirms that it has obtained consent from relevant data subjects, including Buyer employees, where required.

## **9. INDEMNIFICATION.**

Buyer shall indemnify, defend and hold harmless Seller and its related parent, subsidiary and affiliated companies, successors and assigns, and each of their respective officers, directors and employees, from and against any and all claims, losses, damages, costs, and expenses (including attorney’s fees and amounts paid in settlement in good faith) which may be suffered or incurred by any of them as a result of any claim, demand, suit, proceeding or cause of action arising in any manner from: (i) any acts or omissions by Buyer or its representative, arising out of or relating to Buyer’s purchase, handling, transportation, export, re-export, re-transfer, import, possession, use, demonstration, marketing, sale, disposition, distribution or maintenance of Products; (ii) any statements, representations (whether oral, written, express or implied), suppression of information, or failure to disclose information of any kind by Buyer or its representative with respect to Products or Services different or in addition to the applicable Product or Service warranty provided by Seller; (iii) sales by Buyer to installers that Buyer knows or has reason to know are non-qualified, are routine violators of energy or building codes and standards, or have made hazardous installations of similar products; (iv) the improper use or disclosure of Seller’s intellectual property, including trademarks, patents, copyrights and proprietary marketing and business systems information; (v) any intentional misconduct or negligent act or omission of Buyer, its employees, or its agents; (vi) any contractual

obligation assumed by Buyer toward a third-party; (vii) any misuse or modification of Products by Buyer or its employees or agents; or (viii) Buyer's failure to comply with any law applicable to these Terms or the performance of Buyer's obligations hereunder.

#### **10. EXCLUSION OF DAMAGES AND LIMITATION OF LIABILITY.**

a. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AND EXCEPT AS STATED IN THE FOREGOING LIMITED WARRANTY OR OTHER WARRANTY APPLICABLE TO THE EQUIPMENT, SELLER MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND WITH RESPECT TO THE PRODUCTS (INCLUDING OTHER PRODUCTS) AND SERVICES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND SELLER DISCLAIMS ALL OTHER REPRESENTATIONS AND WARRANTIES WHATSOEVER, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NON-INFRINGEMENT, AND ANY WARRANTY ARISING OUT OF ANY COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE. SELLER NEITHER ASSUMES, NOR AUTHORIZES ANY OTHER PERSON PURPORTING TO ACT ON ITS BEHALF TO MODIFY OR TO CHANGE ANY WARRANTY APPLICABLE TO A PRODUCT OR SERVICE, NOR TO ASSUME FOR IT ANY OTHER WARRANTY OR LIABILITY CONCERNING ANY PRODUCT OR SERVICE. SOME JURISDICTIONS DO NOT ALLOW THE FOREGOING EXCLUSIONS AND LIMITATIONS. IN SUCH AN EVENT, SUCH EXCLUSION AND LIMITATION WILL NOT APPLY SOLELY TO THE EXTENT PROHIBITED BY APPLICABLE LAW, AND THE DURATION OF ANY IMPLIED WARRANTIES WILL BE LIMITED TO THE DURATION OF THE FOREGOING LIMITED WARRANTY.

b. TO THE MAXIMUM EXTENT PERMISSIBLE UNDER APPLICABLE LAW, IN NO EVENT WILL SELLER OR ITS AGENTS OR AFFILIATES BE LIABLE, WHATEVER THE LEGAL BASIS FOR THE CLAIM, FOR ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, LIQUIDATED OR PUNITIVE DAMAGES OR FOR ANY DAMAGES FOR LOSS OF BUSINESS, LOSS OF USE, LOSS OF REVENUE OR PROFITS, LOSS ARISING FROM DELAYS, LOSS OF DATA AND OTHER LOSSES ARISING FROM VIRUSES, RANSOMWARE, CYBER ATTACKS OR FAILURES OR INTERRUPTIONS TO NETWORK SYSTEMS, ARISING OUT OF, BASED ON, OR RESULTING FROM THESE TERMS OR THE USE OF, MISUSE OF, OR INABILITY TO USE THE PRODUCTS, EVEN IF SELLER (OR ITS AGENTS OR AFFILIATES) HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

c. IN NO EVENT SHALL SELLER AND ITS AFFILIATES AND THEIR RESPECTIVE PERSONNEL, SUPPLIERS AND VENDORS AGGREGATE LIABILITY UNDER THESE TERMS OR OTHERWISE WITH RESPECT TO THE SPECIFIC PRODUCTS AND SERVICES PURCHASED HEREUNDER EXCEED THE AMOUNTS PAID TO SELLER BY BUYER FOR THE PRODUCTS OR SERVICES GIVING RISE TO SUCH LIABILITY, REGARDLESS OF THE CAUSE OR FAULT AND WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE.

d. THE FOREGOING DISCLAIMERS AND LIMITATIONS WILL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

#### **11. CHANGES; PRODUCT RECALL.**

a. Seller reserves the right to alter, modify, redesign or discontinue the Products or any components of Products and change its service, warranty, support or other policies, without notice and without any obligation to Buyer.

b. In the event of a Product recall, Buyer shall immediately cease using the Product upon receipt of notice from Seller. Buyer's sole obligation in the event of a recall of any Equipment shall be to repair or replace such Equipment. For Third Party Products, Seller will pass through to Buyer any remedies available in the event of a recall of a Third Party Product. The foregoing shall be Seller's sole and exclusive remedies with respect to any Product recall issue.

#### **12. NO LICENSE; SOFTWARE.**

a. Except as provided in subsection (b), the sale of the Products will not confer upon Buyer any license, express or implied, under any patents, trademarks, trade names, or other proprietary rights owned or controlled by Seller, its subsidiaries, affiliates, or suppliers; it being specifically understood and agreed that all the rights are reserved to Seller, its subsidiaries, affiliates, or suppliers. Without limiting the foregoing, Buyer will not, without Seller's prior written consent, use any trademark or trade name of Seller in connection with any of the Products, other than with respect to the resale of the Products pre-marked or packaged by or on behalf of Seller.

b. If software is provided by Seller under these Terms either on a stand-alone basis or as object code and/or firmware contained in a hardware Product, Buyer agrees that (i) such software is licensed and not sold and (ii) the software may only be used in accordance with the terms and conditions of the end user license agreement that accompanies the software or, if none, the terms and conditions of the end user license agreement set forth at

www.johnsoncontrols.com/techterms ("EULA"). If Buyer is a U.S. Government agency, Buyer acknowledges that any such software licensed under these Terms and the applicable EULA is a commercial item that has been developed at private expense and not under a Government contract. The Government's rights' relating to the software are limited to those rights applicable to Buyer's as set forth herein and is binding on Government users in accordance with Federal Acquisition Regulation 48 C.F.R. Section 12.212 for non-defense agencies and/or Defense FAR Supplement 48 C.F.R. Section 227.7202-1 for defense agencies. Any access to hosted services (e.g., SaaS services) provided under these Terms is provided on the terms and conditions available in such hosted services or, if none, the applicable terms set forth at www.johnsoncontrols.com/techterms ("TOS"). In the event of a conflict between the terms set forth in any EULA or TOS and these Terms, the terms set forth in the applicable EULA or TOS shall control unless these terms are modified in accordance with Section 1.

c. In the event that Buyer fails to timely pay any license or other fees in respect of software when due, then the applicable EULA shall automatically expire without notice and be of no further force or effect.

### **13. CANCELLATION AND TERMINATION.**

a. No Products may be returned without prior written approval of Seller. Orders placed with and accepted by Seller may not be canceled except with Seller's written consent prior to shipment and Buyer's acceptance of Seller's cancellation charges, which shall protect Seller against all costs and losses. Seller reserves the right to cancel any sale hereunder prior to delivery in Seller's sole discretion without liability to Buyer (except for refund of monies already paid).

b. In addition to any other remedies that Seller may have, Seller may terminate these Terms with immediate effect upon written notice to Buyer, if Buyer: (i) fails to pay any amount when due under these Terms and the failure continues for five (5) days after Buyer's receipt of written notice of nonpayment; (ii) has not otherwise performed or complied with any of these Terms, in whole or in part; or (iii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors. In addition, Seller may terminate these Terms without cause on ninety (90) days prior written notice to Buyer.

### **14. CONFIDENTIALITY.**

All non-public, confidential, or proprietary information of Seller, including but not limited to trade secrets, intellectual property, business information, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts, rebates, trade secrets, that is disclosed by or on behalf of Seller to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and regardless of whether marked, designated, or otherwise identified as "confidential," in connection with these Terms is strictly confidential, is provided solely for the use of performing these Terms, and may not be disclosed to any person, corporate division or entity, or copied, unless authorized in advance by Seller in writing. Upon Seller's request, Buyer will promptly return all documents and other materials received from Seller. Seller will be entitled to injunctive relief for any violation of this Section, without having to post bond or establish the insufficiency of a remedy at law. This Section does not apply to information that is: (a) in the public domain, through no fault of Buyer, at or subsequent to the time such confidential information was disclosed to Buyer by Seller; (b) rightfully known by Buyer free of any obligation of confidence at the time of disclosure to Buyer by Seller, as evidenced by written records; or (c) rightfully obtained by Buyer from a third party without similar restriction from such party and the disclosure of which from such third party does not constitute a violation of an obligation by such third party to Seller, each as evidenced by written records.

### **15. EXCUSABLE DELAY/FORCE MAJEURE.**

Seller shall not be liable nor in breach or default of its obligations under any contract to the extent its performance of such obligations is delayed, hindered, or prevented, in whole or in part, directly or indirectly, due to causes beyond its reasonable control, whether foreseeable or unforeseeable, including, but not limited to, acts of God, fires, floods, or other natural disasters (declared or undeclared), terrorism, war (declared or undeclared), armed conflict (or the serious threat of same), plagues, epidemics, pandemics, quarantines, or other public health risks and/or responses thereto, insurrection, civil disturbances, insurrection, riots, mob violence, acts or omissions of Buyer or Buyer's suppliers or agents, any act (or omission) by any governmental authority (including any change of law or regulation), strikes, lock-outs, differences with workers, accidents, labor disputes, transportation shortages, the unavailability or shortage(s) of labor, energy, materials, production facilities, transportation, or shipping, cyber-attacks, viruses, ransomware, failures or interruptions to network systems, data breaches, vendor non-performance, or any other cause, casualty, or excusable delay beyond Seller's reasonable control, whether similar or dissimilar to any of the

foregoing. Upon the occurrence of a force majeure or other excusable delay, Seller's performance or delivery date shall be extended for a period equal to the duration of the force majeure event or time lost by reason of delay, plus such additional time as may be reasonably necessary to overcome the effect of the delay. If the delay is due to any acts or omissions of Buyer, or Buyer's agents, contractors or suppliers, Seller shall be entitled to both an equitable performance and price adjustment. If Seller incurs increased cost by reason of delay not attributable to any act or omission of Buyer (including but not limited to extended warehouses and storage fees, labor wages, etc.), the increased cost shall be distributed equitably between Seller and Buyer, or the Contract shall be cancellable at Seller's election.

## **16. COMPLIANCE.**

Each party will at all times and at its own expense: (i) strictly comply with all applicable laws, rules, regulations, ordinances and governmental orders, now or hereafter in effect, relating to its performance of this Agreement, including, without limitation, export and import laws and regulations; (ii) pay all fees and other charges required by such laws, rules, regulations and orders; and (iii) maintain in full force and effect all licenses, permits, authorizations, registrations and qualifications from all applicable governmental departments and agencies to the extent necessary to perform its obligations hereunder. If requested by Seller, Buyer will sign written assurances and other export or import related documents, as may be required under applicable export or import laws and regulations.

### **TRADE COMPLIANCE.**

a. Any products or technical information provided under this Agreement may be subject to U.S. export controls and the trade laws of other countries. The parties agree to comply with all applicable export control regulations and to obtain any required licenses or item classification to export, re-export, or import deliverables. The parties agree not to export or re-export to entities on the current U.S. export exclusion lists or to any embargoed or terrorist supporting countries as specified in the U.S. Export Administration Regulations (EAR). The parties will not use deliverables for prohibited nuclear, missile, or chemical biological weaponry end uses as specified in the EAR.

b. Buyer will advise Seller in writing within three (3) calendar days of any actual or perceived non-compliance with applicable export control laws and regulations (to include sanction and embargo laws).

## **17. GOVERNING LAW; VENUE; DISPUTE RESOLUTION.**

### **a. Arbitration**

All claims, disputes, and controversies arising out of or relating in any way to the relationship of the Parties or of these Terms, or the breach thereof, ("Dispute"), shall be resolved through arbitration administered by JAMS in accordance with the Comprehensive Arbitration Rules and Procedures of JAMS ("Rules"), as modified by the rules and procedures set forth below. The award rendered by the arbitrator(s) shall be final and binding on the Parties, except that either Party may appeal an award with respect to a Dispute where the total value exceeds \$ 2,000,000 (two million US dollars) as set forth below. The site of the arbitration shall be Milwaukee, Wisconsin. The arbitration shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1-16, and judgment upon the award rendered by the Arbitrator or Arbitrators Panel (as defined below) may be entered by any court of competent jurisdiction. The costs of the arbitration shall be borne equally by the Parties.

Depending on the total value in Dispute between the Parties, the arbitration shall be further conducted in accordance with the following rules and procedures. Unless the total value of the Dispute is \$ 10,000,000 (ten million US dollars), such Disputes shall be resolved by a single Arbitrator mutually selected by the Parties. If the Parties are unable to agree upon an Arbitrator, JAMS will appoint an Arbitrator. For any Dispute with a total value in excess of \$ 10,000,000 (ten million US dollars), three Arbitrators will be selected and appointed by JAMS (collectively the "Arbitrator Panel"). Any Dispute shall be resolved within twelve months of the appointment date of the Arbitrator or Arbitrator Panel. Discovery shall be limited as follows: (1) there shall be no interrogatories permitted as part of the arbitration except to identify witnesses; (2) electronic discovery (which shall be permitted only upon a showing of good cause) shall be limited to the electronic files of no more than five employees of each party and the utilization of reasonable search terms shall be an acceptable method of searching for relevant documents in response to any document request or order to produce electronic documents; (3) there shall be no more than three depositions taken by each Party (this total includes depositions of employees of the parties and third party witnesses but excludes expert depositions); (4) depositions of the Chief Executive Officer and Chief Financial Officer and other Senior Executives of the Seller and Johnson Controls shall not be permitted to be one of the three depositions unless the arbitrator finds good cause for the deposition of such person, such person has personal knowledge of the facts surrounding the dispute, and the evidence sought cannot be reasonably obtained from another witness; (5) the Chief Executive Officer and Chief Financial Officer of Johnson Controls shall also not be called to the arbitration as witnesses unless the arbitrator finds good cause for the testimony of such persons, such person has personal

knowledge of the facts surrounding the dispute, and the evidence sought cannot be reasonably obtained from another witness; and (6) the parties shall exchange reports in the form set forth in Federal Rule of Civil Procedure 26 for any expert the parties intend to call as a witness at the arbitration hearing. For cases involving expert discovery, expert reports shall be exchanged in advance of any expert depositions. The Parties agree each shall have the right to bring a dispositive motion in advance of any merits hearing if such motion is directed to discrete legal issues or defenses based on clear contractual provisions, provided the Arbitrator or Arbitrator Panel places limits on briefing of the motion and implements an accelerated schedule that will not delay the issuance of a final award within the twelve-month time period contemplated herein. The Arbitrator or Arbitrator Panel will provide a reasoned ruling on the motion in writing to the Parties sufficiently in advance of any scheduled merits hearing. If a merits hearing is thereafter conducted, the Arbitrator or Arbitrator Panel shall issue a reasoned award stating in writing the findings of fact and conclusions of law in support of the decision. Such award shall be final unless either party chooses to appeal the award, in which case the parties adopt and agree to implement the JAMS Optional Arbitration Appeal Procedure, as it exists on the effective date of this Agreement.

b. **Governing Law.** These Terms shall be governed by and interpreted in accordance with the laws of the State of New York, excluding its conflict of law rules and the arbitration provision in these Terms shall be governed by the Federal Arbitration Act. THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS DOES NOT APPLY TO THESE TERMS OR THE DOCUMENTS RELATED HERETO AND IS HEREBY EXPRESSLY DISCLAIMED BY SELLER AND BUYER.

#### **18. ETHICS.**

Buyer agrees to keep in strictest confidence and not use for itself or disclose to any third party, the trade secrets, intellectual property and confidential business information Seller shares with Buyer during the course of these Terms. Buyer, including its officers, directors, employees and agents, shall use only legitimate, legal and ethical business practices to perform these Terms. Buyer agrees to abide by Seller's Code of Ethics, which is located on Seller's website at [valuesfirst.johnsoncontrols.com](http://valuesfirst.johnsoncontrols.com).

#### **19. EQUAL EMPLOYMENT OPPORTUNITY.**

The parties hereby incorporate by reference the requirements of 41 C.F.R. §§ 60-1.4(a), 60-300.5(a), 60-741.5(a) and 29 C.F.R. Part 471, Appendix A to Subpart A, if applicable. The Seller and Buyer shall abide by the requirements of 41 C.F.R. §§ 60-1.4(a), 60-300.5(a), 60-741.5(a) and 29 C.F.R. Part 471, Appendix A to Subpart A as applicable to the terms of its obligations hereunder. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability.

#### **20. REPORTING OBLIGATION.**

Buyer must promptly notify Seller in writing of any: (i) criminal conviction; (ii) debarment; (iii) indictment or other charge of violating criminal statutes or regulations; (iv) ineligibility to contract with or to receive a license or other form of authorization for a government agency; or (v) denial, suspension, or revocation of eligibility to be involved in exports, imports, or conduct business.

#### **21. MISCELLANEOUS.**

a. Buyer acknowledges that it has not been induced to purchase any of the Products from Seller by any representation or warranty not expressly set forth in these Terms. These Terms, the Sales Confirmation and any Superseding Agreement constitute the entire agreement of the parties and supersede all existing agreements and all other oral or written communications between them concerning its subject matter. If there is a conflict between the provisions of the Sales Confirmation, the Superseding Agreement and these Terms, then the terms of the Sales Confirmation will govern. No waiver by Seller of any of the provisions of these Terms is effective unless explicitly set forth in writing that specifically references these Terms and is signed by Seller. No failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from these Terms operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power, or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The Section headings contained in these Terms are for convenience only and will not affect the interpretation of any provision. If any provision of these Terms is held to be prohibited or unenforceable, the remaining provisions will continue in full force and effect. Buyer will not assign any quotation or accepted order for the Products, in whole or in part, without

Seller's prior written consent. Buyer agrees that Seller may scan, image or otherwise convert these Terms into an electronic format of any nature. Buyer agrees that a copy of these Terms produced from such electronic format is legally equivalent to the original for any and all purposes, including litigation. All terms that by their nature are intended to survive shall survive any cancellation or expiration of these Terms or any purchase order or Sales Confirmation.

b Seller expressly disclaims any requirement, understanding or agreement, whether express or implied, contained in any Buyer purchase order, shipping release form, policy, code of conduct or elsewhere, that any of Seller's personnel be vaccinated against Covid-19 under any federal, state or local law, regulation or order applicable to government contracts or subcontracts, including, without limitation, Presidential Executive Order 14042 ("Ensuring Adequate COVID Safety Protocols for Federal Contractors") and Federal Acquisition Regulation (FAR) 52.223-99 ("Ensuring Adequate COVID Safety Protocols for Federal Contractors"), unless and solely to the extent that such requirement is expressly set forth in a written agreement manually signed by an authorized officer of Seller.

## **22. NOTIFICATION.**

All notices, approvals, consents, requests for demands required or permitted to be given under these Terms shall be in writing and shall be deemed sufficiently given when deposited in the mail, registered or certified, postage prepaid, and addressed to the party entitled to receive such notice at the address designated herein:

If to Buyer:

[INSERT SELLER NAME]  
[STREET ADDRESS]  
[CITY, STATE ZIP, COUNTRY]

If to Seller:

Johnson Controls Legal Department  
C/O Johnson Controls, Inc.  
507 E. Michigan Street  
P.O. Box 423  
Milwaukee, WI 53202

November 11, 2021