

Terms and Conditions Supply of Goods and Services



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TERMS AND CONDITIONS

The Company means the Johnson Controls contracting entity that is identified in the Quotation.

The Client's attention is particularly drawn to the exclusions and limitations of liability at Condition 10.



1. Definitions and Interpretation

In these conditions:

- 1.1 the following words and expressions have the following meanings and, in addition, any words and expressions defined in any Condition will have the same meaning when used in any other Condition:
- 1.1.1 **Business Day:** a day that is not a Saturday, Sunday or public or bank holiday in England and/or Wales.
- 1.1.2 **Charges:** the charges for the Services set out in the Quotation, as those charges may be varied from time to time in accordance with **Condition 8.5**

- 1.1.3 **Civil Procedure Rules** the rules of civil procedure used by the Court of Appeal, High Court of Justice, and County Courts in civil cases in England and Wales
- 1.1.4 **Client:** the person named as the customer in the Quotation
- 1.1.5 **Confidential Information:** has the meaning given to it in **Condition 18.3**
- 1.1.6 **Contract:** these Terms and Conditions, the Quotation and the Purchase Order (excluding any terms and conditions contained in the Purchase Order)
- 1.1.7 **Deliverables:** any deliverable, including but not limited to reports, documents, plans, materials or other deliverables provided by the Company pursuant to the provision of the Services
- 1.1.8 **Delivery:** the date on which the Goods are delivered as shall be determined pursuant to **Condition 6.1**
- 1.1.9 **Event:** has the meaning given to it in **Condition 10.8**
- 1.1.10 **Goods:** has the meaning given to it in **Condition 2.2**
- 1.1.11 **Group Companies:** in respect of a person, its Holding Companies, its Subsidiaries and the Subsidiaries of any of its Holding Companies from time to time ("Holding Company" and "Subsidiary" having the meanings set out in section 1159 Companies Act 2006)
- 1.1.12 **Insolvent:** any of the following occurs: (i) the Client has a monitor, receiver of any kind, administrator or provisional liquidator appointed in respect of the Client or the Client's business; (ii) any person (including the Client) takes any step or action to appoint a monitor or administrator in respect of the Client; (iii) the Client passes a resolution in respect of the Client's winding-up or have a winding up order made by a court in respect of the Client; (iv) the Client ceases to carry on business; (v) the Client is subject to anything analogous to any of the events above
- 1.1.13 **Liability:** liability arising out of or in connection with the Contract, whether in contract, tort, misrepresentation, restitution, under statute or otherwise, including any liability arising from a breach of, or a failure to perform or defect or delay in performance of, any of a party's obligations under the Contract and/or any defect in any of the Goods, in each case howsoever caused including if caused by negligence.
- 1.1.14 **Purchase Order:** the written ordering document provided by the Client to the Company in relation to the Goods and/or Services (excluding any terms and conditions contained therein) and in the event there is any conflict between the signed Quotation and the signed Purchase Order, the signed Quotation shall take precedence
- 1.1.15 **Prices:** the prices for the Goods set out in the Quotation as those prices may be varied from time to time in accordance with **Condition 8.5**

- 1.1.16 **Quotation:** the written quotation provided by the Company to the Client in relation to the Goods and/or the Services, including written responses supplied by the Company in relation to tender proposals and portal bids
- 1.1.17 **Recoverable Liabilities:** all losses, liabilities, indemnified costs, damages and expenses that the indemnified person does or will incur or suffer, all claims or proceedings made, brought or threatened against the indemnified person by any person and all losses, liabilities, indemnified costs, damages and expenses the indemnified person does or will incur or suffer as a result of defending or settling any such actual or threatened claim or proceeding
- 1.1.18 **Services:** has the meaning given to it in **Condition 2.2**
- 1.1.19 **Specification:** the written technical specification for the Goods and/or the Services set out in the Quotation or any other specification for the Goods and/or Services as agreed between the parties in writing from time to time
- 1.1.20 **Term:** has the meaning given to it in **Condition 12.1**
- 1.1.21 **Third Party Specification:** has the meaning given to it in **Condition 3.1**
- 1.1.22 **VAT:** value added tax and any other tax of a similar nature above imposed in any country in the world
- 1.1.23 **Warranty Period:** the period starting on Delivery and ending on the earlier of:
- a) 12 months from the date of Delivery; or
 - b) expiry of the warranty period as provided by the manufacturer of the Goods, as set out in the Quotation
- 1.1.24 **Trade Restrictions** shall mean: any additional, increased or new customs duties, tariffs, charges/duty, quota, tariff-rate quota, or cost associated with the withdrawal of tariff/duty concessions pursuant to a trade agreement(s).
- 1.2 all headings are for ease of reference only and will not affect the construction or interpretation of these Conditions
- 1.3 references to a “person” include any individual, body corporate, association, partnership, firm, trust, organisation, joint venture, government, local or municipal authority, governmental or supra-governmental agency or department, state or agency of state or any other entity (in each case whether or not having separate legal personality);
- 1.4 references to any legislation or legislative provision will include any subordinate legislation made under it and will be construed as references to such legislation, legislative provision and/or subordinate legislation as modified, amended, extended, consolidated, re-enacted and/or replaced and in force from time to time;
- 1.5 any words following the words “include”, “includes”, “including”, “in particular” or any similar words or expressions will be construed without limitation and accordingly will not limit the meaning of the words preceding them and the ejusdem generis rule will not apply;

- 1.6 references to “in writing” or “written” include facsimile and e-mail but not other methods of electronic messaging; and
- 1.7 an obligation on a party to procure or ensure the performance or standing of another person will be construed as a primary obligation of that party.



2. | Contract Formation

- 2.1 Any Quotation given by the Company will be valid for the validity period stated in the Quotation and will constitute an offer.
- 2.2 The parties agree that upon the Company issuing a Quotation to the Client, for a binding contract to be formed, the Quotation will be signed by the Client which shall constitute the Client’s acceptance of the Quotation. If the Quotation is not signed by the Client but instead the Client issues a separate Purchase Order to the Company, this Purchase Order shall be deemed to be acceptance of the Quotation. If the Purchase Order contains any terms and conditions, those will be disregarded and these Conditions shall apply. The Quotation will form a contract for the purchase of goods set out in the Quotation (“Goods”) and/or the services set out in the Quotation (“Services”) and the provision of Deliverables from the Company on these Conditions. If a Quotation or Purchase Order is not signed, finalised or provided prior to the commencement of the supply of the Goods, performance of the Services or provision of Deliverables by the Company, such Quotation will be deemed to have been signed on the date on which the Goods and/or the Services and/or the Deliverables are first delivered or provided and shall form the Contract under these Conditions.
- 2.3 These Conditions and any terms and conditions described or referred to herein are the only terms and conditions on which the Company will supply Goods, Services and/or Deliverables to the Client and shall apply exclusively to the entire business relationship between the Company and the Client for the Goods, Services and Deliverables. These Conditions will apply to the exclusion of all other terms and conditions (including any terms and conditions set out in the Purchase Order) and all terms and conditions diverging from these Conditions shall not be valid even if the Company has effected delivery of Goods or began providing Services without reservation, including any terms and conditions which the Client purports to apply under any purchase order, confirmation of order or similar document (whether or not such document is referred to in the Contract) regardless of the timing of sending such terms and conditions, and any terms and conditions which may otherwise be implied by trade, custom, practice or course of dealing. These Conditions will apply to the exclusion of all other terms and conditions even if the Conditions are not specifically referred to in future correspondences.

- 2.4 Delivery of the Goods or Deliverables or commencement of the performance of the Services will be deemed conclusive evidence of the Client's acceptance of these Conditions.
- 2.5 The Company will be entitled, at its discretion, to deliver Goods by separate instalments. The Company will be entitled to invoice the Price for each instalment separately in accordance with **Condition 8.6**. Each instalment will be deemed to be a separate contract and no cancellation or termination of any one contract relating to an instalment will give the Client the right to cancel or terminate any other contract.

3. | Third Party Specifications

- 3.1 If the Client requests the Company to use any drawings, information, or alternative specification, quote or brief which has been prepared by the Client itself or a third party ("**Third Party Specification**"), the use of any Third Party Specification is at the Client's sole risk and the Company is not responsible for ensuring the accuracy, suitability or efficacy of any Third Party Specification. The Company shall have no Liability to the Client for any Goods, Deliverables or Services which do not comply with the terms of the Contract or are otherwise defective or unsuitable as a result of any Third Party Specification.

4. | The Services

- 4.1 Subject to **Condition 3.1** the Company will supply the Services to the Client in accordance with:
- 4.1.1 any services Specification set out in the Quotation;
 - 4.1.2 any operations and maintenance manuals included in the Quotation; and
 - 4.1.3 reasonable care and skill.
- 4.2 The Company will use reasonable endeavours to provide the Services on the estimated performance date set out in the Quotation, but time for provision of the Services will not be of the essence. Any performance dates given by the Company are estimates only.
- 4.3 The Company reserves the right, as it determines in its sole discretion, to make an improvement, substitution or modification to any element or part of the Services at any time provided that such improvement, substitution or modification will not have a material detrimental impact on the Services.

5. | The Goods

- 5.1 The Company will be entitled at any time prior to supply of Goods: (i) to vary the design, finish or Specification of Goods and/or their packaging; and/or (ii) to substitute any materials or parts which are used in Goods and which are unavailable for any reason with alternative materials or parts, provided that this does not materially affect their quality or performance or is necessary to comply with health and safety or other legal requirements. The Company will use reasonable endeavours to give the Client prior written notice of any such variation or substitution.
- 5.2 All samples, drawings, descriptive and illustrative matter and advertising issued or published by the Company (or the manufacturer of the Goods) whether in catalogues, brochures, websites, other promotional material or otherwise are for the sole purpose of giving an approximate idea of the relevant Goods.

6. | Delivery

- 6.1 The Company will deliver the Goods to the UK address specified in the Quotation or retain the Goods in a storage facility for a period and at rates agreed in writing by the parties. The Client will be responsible for off-loading the Goods from the delivery vehicle. The Company will inform the Client in advance of the date on which the Goods will be delivered. Where the Company is delivering Goods to a UK address specified in the Quotation, Delivery will be deemed to occur when they have been off-loaded at the delivery address. Where the Company is retaining the Goods in a storage facility for the Client, Delivery will be deemed to occur when the Goods have been off-loaded at the storage facility.
- 6.2 The Client will not be entitled to cancel the Contract or to reject any Goods by reason of a delay in delivery or failure to deliver.
- 6.3 If Delivery occurs but the Client fails to accept delivery of the Goods, the Company will be entitled to:
- 6.3.1 store or arrange for storage of the Goods until the Client collect/accept delivery of them or they are disposed of under **Condition 6.3.2** (as applicable);
 - 6.3.2 treat the Contract as repudiated by the Client and dispose of the Goods in any way it sees fit, including by sale to another person. If the Company sells any of the Goods under this **Condition 6.3.2** at

a price which is less than the relevant Price plus any relevant packaging, insurance, carriage and delivery costs, the Company will be entitled to charge the Client for the shortfall; and

- 6.3.3 charge the Client for all costs and expenses which we incur under **Conditions 6.3.1 and 6.3.2.**
- 6.4 If the delivery of Goods is to an address outside of the UK, the Goods will be delivered Ex Works Incoterms 2020, unless otherwise specified in the Quotation.



7. | Passing of risk and retention of title

- 7.1 Risk of damage to or loss of the Goods will pass to the Client on Delivery. Legal and beneficial ownership of the Goods will not pass to the Client until the Company has received in full in cleared funds all sums due in respect of the Goods, and all other sums which are or which become due to the Company from the Client on any account whatsoever.
- 7.2 Until ownership of the Goods has passed to the Client, the Client will hold the Goods on a fiduciary basis as the Company's bailee and note the Company's interest in the Goods on the Client's relevant insurance policy, store the Goods (at no cost to the Company) separately from all other goods in such a way that they remain readily identifiable as the Company's property, not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods, not, without the Company's prior written consent, annex any Goods to the Client's premises, maintain the Goods in satisfactory condition; and keep the Goods insured for their full price against damage or loss on an "all risks" basis with insurers approved by the Company, (acting reasonably), whenever requested by the Company produce a copy of the policy of insurance in respect of the Goods to the Company, do nothing and not omit to do anything which in consequence permits any insurer to refuse to indemnify the Client in full in accordance with the terms of any insurance policy maintained in respect of the Goods in respect of any claim made under any such insurance policy and ensure that any insurance proceeds received by the Client under the relevant policy are applied to repairing damaged Goods or, in the event that they are not so applied, hold such proceeds on trust for the Company.
- 7.3 If the Client resells any Goods, the Client will hold such part of the proceeds of sale as represents the amount owed by the Client to the Company in trust for the Company and will account to the Company accordingly.
- 7.4 The Client's right to possession and use of the Goods will terminate immediately if, before ownership of the Goods passes to the Client in accordance with **Condition 7.1**:
- 7.4.1 the Client become Insolvent;
 - 7.4.2 the Company gives the Client written notice that it has any concerns regarding the Client's financial standing;
 - 7.4.3 the Client fails to pay any sum due to the Company under the Contract on or before the due date;
 - 7.4.4 the Client encumbers or in any way charges any of the Goods; or
 - 7.4.5 the Contract expires or terminates for any reason.
- 7.5 The Client grants, and will procure that the owner of any relevant third party premises grants, the Company, its agents, employees and sub-contractors an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Client's right to possession, use and resale has terminated, to recover them.
- 7.6 The Company's rights contained in this **Condition 7** will survive expiry or termination of the Contract however arising.





8. | Price and Payment

- 8.1 The Client will pay the Prices and Charges to the Company in accordance with this **Condition 8** and the payment terms set out in the Quotation.
- 8.2 The Prices and Charges are exclusive of packaging, insurance, carriage and delivery costs which will be payable by the Client in addition to the Prices and Charges.
- 8.3 Unless otherwise stated in the Quotation, the Company may, at its discretion, require the Client to pay to the Company, either the entirety of the Price and Charges as set out in the Quotation, or an amount equal to a percentage of the Price and Charges as set out in the Quotation, as advance payment within 3 days after the Quotation is signed.
- 8.4 The consideration for any supply made under the Contract is exclusive of any VAT which is due in relation to such supply, which will be payable in addition to that consideration in the manner and at the rate prescribed by law from time to time. The Prices and/or Charges do not include taxes, fees, customer duties, tariffs, or other charges imposed and/or enacted by a government, however designated or imposed (collectively, "Taxes"). All Taxes are the responsibility of the Client.
- 8.5 The Company will be entitled to vary the Prices and/or Charges:
- 8.5.1 by giving the Client written notice on an annual basis for any reason;
- 8.5.2 at any time by giving written notice to the Client to reflect any variation in the cost of supplying the Goods and/or Services which arises as a consequence of any:
- 8.5.2.1 change in law;
- 8.5.2.2 variation in the Client's requirements for the Goods and/or Services;
- 8.5.2.3 any events outside of the Company's control; and/or
- 8.5.2.4 increase in cost of raw materials, component parts, third part products, labour rates, Trade Restrictions, other government actions or policies or similar events outside of the Company's control; and/or
- 8.5.2.5 for information provided by the Client being inaccurate or incomplete or any failure or delay by the Client in providing information.
- 8.6 The Company reserves the right to invoice the Client based on the progress of the Goods as a whole of the Prices or against a schedule of values (billing schedule) to be agreed between the parties and inserted into the Contract.
- 8.7 The Company reserves the right to invoice the Client based on the progress of the Services as a whole of the Charges or against a schedule of values (billing schedule) to be agreed between the parties and inserted into the Contract.
- 8.8 Each invoice will be payable by the Client within 30 days following the date of the invoice. The Client will make all payments in pounds sterling in available cleared funds by electronic transfer to such bank account as the Company may nominate from time to time.
- 8.9 Without prejudice to the Company's other rights and remedies:
- 8.9.1 if any sum payable under the Contract is not paid on or before the due date for payment the Company will be entitled to charge the Client interest on that sum of 8% above the Bank of England base rate from the due date until the date of payment (whether before or after judgment), such interest to accrue on a daily basis;
- 8.9.2 if the Client fails to make any payment due to the Company under the Contract or any other contract between the Client and the Company on or before 7 days after the due date the Company will be entitled to withhold further deliveries of Goods and to suspend provision of the Services and Deliverables until payment of all overdue sums has been made;
- 8.9.3 if the Company has any concerns regarding the Client's financial standing the Company will be entitled, by giving written notice to that effect to the Client, to issue invoices prior to Goods and/or Deliverables being delivered and the Company will not be required to deliver the Goods and/or Deliverables until the relevant invoice has been paid in full;
- 8.9.4 the Company reserves the right to report the Client to any applicable credit bureau if any sum payable by the Client under the Contract is not paid on or before the due date for payment; and
- 8.9.5 the Client will pay to the Company its reasonable costs and expenses (including any legal fees) of collecting the Goods from the Client if the Client fails to make payment of any sum under the Contract on or prior to the date of payment.
- 8.10 Save as otherwise expressly provided in these Conditions or required by law, all payments to be made by the Client to the Company under the Contract will be made in full and without any set-off or any deduction or withholding including on account of any counter-claim.
- 8.11 Following termination of the Contract:

- 8.11.1 the Company will be entitled to invoice all Prices and Charges and any packaging, insurance, carriage and delivery costs incurred which have not yet been invoiced; and
 - 8.11.2 all invoices (including any invoices issued under **Condition 8.11.1**) will become immediately due and payable by the Client.
- 8.12 If at any time the Client's financial responsibility is deemed unsatisfactory to the Company in its reasonable opinion, the Company may defer shipments of any Goods and commencement of any Services, require an advance payment or other security and/or terminate the Contract without Liability and without waiving any other remedies the Company may have against the Client.



9. | Warranty

- 9.1 The Company warrants to the Client that at the time of Delivery the Goods will:
- 9.1.1 subject to **Condition 5.1**, conform to the Specification in all material respects; and
 - 9.1.2 be free from material defects in design, materials or workmanship.
- 9.2 If there is a breach of either of the warranties at **Condition 9.1**, the Client will:
- 9.2.1 give the Company written notice of the breach, such notice to be given:
 - 9.2.1.1 in respect of any breach that should be apparent from a visual inspection of the relevant Good, within 3 Business Days from and including the date of Delivery; or
 - 9.2.1.2 in respect of any other breach, within 5 Business Days after the Client become aware or should reasonably have been aware of the breach and prior to expiry of the Warranty Period;
 - 9.2.2 at the Company's option either return to the Company (at the Client's cost) the relevant Good or permit the Company or the Company's agent or sub-contractor to inspect it at the Client's premises;

9.2.3 provide the Company with all information and assistance which the Company may reasonably require to investigate the alleged breach; and

9.2.4 not use the relevant Good after becoming aware of the breach.

9.3 Subject to **Condition 10.5**, the Company's only Liability for breach of either of the warranties at **Condition 9.1** will be, at the Company's option, to repair or replace the relevant Good or to reduce the Price of the relevant Good by a sum which is equitable in the circumstances.

9.4 Subject to **Conditions 10.5**, the Company will not have any Liability for a breach of a warranty at **Condition 9.1** if:

9.4.1 notice of the breach was not given to the Company in accordance with the relevant timescale as set out in **Condition 9.2.1**;

9.4.2 the Client does not comply with any of the Client's obligations at **Conditions 9.2.2, 9.2.3 or 9.2.4** in respect of the breach; or

9.4.3 the breach was drawn to the Client's attention before formation of the Contract or the Good was examined by the Client before formation of the Contract and the examination ought to have revealed the breach.

9.5 The Client acknowledges that, without limitation, the following defects are not to be taken as evidence of a breach of a warranty at **Condition 9.1**:

9.5.1 a defect in a Good caused by damage in transit after Delivery;

9.5.2 a defect in a Good caused by fair wear and tear; or

9.5.3 a defect in a Good caused or exacerbated by improper use, handling, alteration, installation, repair, maintenance, storage or failure to comply with instructions provided with the Good, in each case after Delivery.

9.6 Subject to **Condition 10.5**, all warranties, conditions and other terms implied by law (whether by statute, common law or otherwise) are excluded from the Contract.



10. | Exclusions and Limitations of Liability

The Client's attention is particularly drawn to this Condition.

- 10.1 Subject to **Condition 10.5**, the Company's maximum aggregate Liability will be limited to an amount equal to 100% of the total Prices and Charges paid under the Contract by the date of the relevant default.
- 10.2 The Company will have no Liability to the Client, in each case whether direct, indirect or consequential, for loss of revenue, loss of profit, loss of use, loss of production, loss of business, loss of opportunity, loss of goodwill, loss of reputation, loss of anticipated savings, loss of margin, loss of bargain, liability that the Client has to third parties, loss of use or value of any data or software, wasted management or expenditure or indirect, consequential or special loss, subject always to **Conditions 10.3 and 10.5**.
- 10.3 Without prejudice to **Condition 10.5** the financial limit in **Condition 10.1** will not operate to limit or restrict the Client's obligations to pay the Prices, the Charges or related interest payments.
- 10.4 The Company will not be in breach of the Contract or otherwise liable to the Client for any failure to perform or delay in performing its obligations under the Contract if such failure or delay is due to any event or circumstance beyond the Company's reasonable control.
- 10.5 Nothing in the Contract will operate to exclude or restrict any Liability of a party that cannot be excluded or restricted in the Contract in respect of death or personal injury resulting from negligence by operation of Section 2(1) Unfair Contract Terms Act 1977, for fraud or fraudulent misrepresentation, for breach of its obligations arising under section 12 Sale of Goods Act 1979, for breach of its obligations arising under Section 2 Supply of Goods and Services Act 1982, or for any matter for which it is not permitted by law to exclude or limit, or to attempt to exclude or limit, its liability.
- 10.6 Any Liability of a party which falls within **Condition 10.5** will not be taken into account in assessing whether the financial limit in **Condition 10.1** has been reached.
- 10.7 Each of the Company's employees, agents and sub-contractors will be entitled to enforce all the terms of this **Condition 10** subject to and in accordance with the Contracts (Rights of Third Parties) Act 1999 and the terms of the Contract. Accordingly and for the avoidance of doubt the financial limit on liability set out in **Condition 10.1** is the maximum liability of the Company, Company's employees, agents and sub-contractors in aggregate. The parties may vary or rescind the Contract without the consent of the Company's employees, agents or sub-contractors.
- 10.8 The Client acknowledges that the Goods and Services do not eliminate the events they are intended to detect, avert or record (including for example,

fire, flood, water ingress, leak or break in (an "Event")) and any loss, cost or expense arising from such Events is at the Client's sole risk. The Client acknowledges that the Company has advised the Client to obtain insurance covering the risk of loss from such Events for the Client's premises, property and equipment. If, notwithstanding the foregoing, the Company is found liable for any damage or expense arising, directly or indirectly, from a failure of the Goods or Services to detect, avert or record any occurrence, whether such failure to detect, avert or record resulted from the Company's negligence or otherwise, the Company's aggregate Liability is, subject to **Condition 10.5**, limited to the amount set out in **Condition 10.1**.

- 10.9 The Company shall have no Liability for any acts, omissions, negligence or tampering carried out by the Client itself, the Client's customers or any other third party.
- 10.10 The Company does not warrant that any Services will be uninterrupted, error-free, (including interruptions due to cyberattacks or malicious code or otherwise) free of harmful components, timely or secure.
- 10.11 The Client acknowledges that the limitations and exclusions of the Company's Liability are reasonable and accurately reflect the risk in and value of the Contract.



11. | Client Obligations

11.1 The Client will:

- 11.1.1 provide the Company with all such co-operation, information, assistance, site access, materials and resources that the Company may reasonably require from time to time in connection with the supply of the Services, the performance of the Company's obligations or the exercise the Company's rights under the Contract;
- 11.1.2 not alter or modify the Goods in any way; and
- 11.1.3 obtain such licences, permits, consents and authorisations as may be required by applicable law.

11.2 The Client will comply with the Company's instructions and provide such cooperation and assistance as the Company may request in connection with:

- 11.2.1 any product recall initiated by or involving the Company and relating to Goods;

- 11.2.2 any other corrective action initiated by or involving the Company to address actual or potential defects, safety or compliance issues relating to Goods; or
 - 11.2.3 any notification to and/or investigation by a regulatory authority concerning actual or potential defects, safety or compliance issues relating to Goods.
- 11.3 Notwithstanding any other term of the Contract the Company will not be in breach of the Contract to the extent the Company's failure to perform or delay or defect in performance of its obligations under the Contract arises as a result of:
- 11.3.1 any breach by the Client of the Client's obligations contained in the Contract;
 - 11.3.2 the Company relying on any incomplete or inaccurate data provided by a third party; or
 - 11.3.3 the Company complying with any instruction or request by the Client or one of Client's employees.



12. | Term and Termination

- 12.1 The Term of the Contract shall be for an initial period as set out in the Quotation, which will then roll for a further period of a year unless terminated by either party on no less than 30 days' written notice, such notice to expire no earlier than the end of that year.
- 12.2 If the Client commits a material breach of the Contract (which shall include any failure to make payment within 7 days after the due date) the Company may terminate the Contract by giving not less than 3 days' written notice to that effect to the Client.
- 12.3 The Company may terminate the Contract at any time by giving not less than 7 days' written notice to that effect to the Client. Subject to **Condition 12.4**, the Client may not terminate the Contract for any reason during the Term.
- 12.4 If an event or circumstance which gives rise to relief from liability under **Condition 10.4** continues for a period of more than 30 days, either party will be entitled to terminate the Contract by giving not less than 3 days' written notice to that effect to the other party.
- 12.5 Following expiry or termination of the Contract any Conditions which expressly or impliedly continue to have effect after expiry or termination of the Contract will continue in force; and all other rights and obligations will

immediately cease without prejudice to any rights, obligations, claims (including claims for damages for breach) and liabilities which have accrued prior to the date of expiry or termination.

- 12.6 Within 7 days after the date of expiry or termination of the Contract each party will, subject to the exception set out in **Condition 12.7**, if requested to do so, return to the other party all of the other party's Confidential Information (including all copies and extracts) in its possession or control and cease to use the other party's Confidential Information.
- 12.7 Each party may retain any of the other party's Confidential Information which it has to keep to comply with any applicable law or which it is required to retain for insurance, accounting or taxation purposes. The provisions of **Condition 18** will continue to apply to retained Confidential Information.



13. | Data Protection

- 13.1 Where the Company acts as a data processor on the Client's behalf, the following terms will apply: www.johnsoncontrols.com/dpa.
- 13.2 Where the Company acts as data controller, the Company will process all personal data in accordance with its privacy notice at www.johnsoncontrols.com/privacy.



14. | Intellectual Property

- 14.1 The information obtained during the delivery of the Goods, provision of the Deliverables and performance of the Services shall be the Client's exclusive property. With the exclusion of personal data, the Company will access and use that information to deliver the Goods and provide the Services and the Deliverables. The Client grants the Company the universal, perpetual, and irrevocable right to use, manage, modify, sublicense, and create derivative products from such information at no additional charge to the Company. The Company will retain all intellectual property rights, data, materials, and products created as a result of the delivery of the Goods, provision of the Deliverables and performance of the Services.

15. | TUPE

- 15.1 The Client acknowledges that it is the shared understanding of the parties that the Transfer of Undertakings (Protection of Employment) Regulations 2006 (“TUPE”) will not apply upon either:
- 15.1.1 the commencement of Contract or the commencement of provision of the Services; or
 - 15.1.2 the expiry or termination of the Contract, whether in whole or in part or the commencement of provision of replacement services by the Client or a replacement supplier.
- 15.2 If, despite **Condition 15.1**, the contract of employment or engagement of, or any other liability in relation to, any member of the Client's personnel transfers or is alleged to transfer to the Company (or any of its sub-contractors) pursuant to TUPE as a consequence of the commencement of the Contract or the commencement of provision of the Services (or any part of them), the Client will indemnify the Company (and Company's sub-contractors) against the Recoverable Liabilities, in each case arising out of or in connection with:
- 15.2.1 any claim for a failure to properly inform and consult under TUPE in relation to any of the Client's personnel; and
 - 15.2.2 the employment or engagement and/or the termination of employment or engagement of any of the Client's personnel (including notice pay, any payment in respect of accrued holidays and any statutory and/or contractual redundancy payments) provided that this indemnity will not apply in respect of any Recoverable Liability arising from the Company's discriminatory acts or omissions.

16. | Digital Solutions (if applicable)

- 16.1 **Digital Enabled Services; Data.** If the Company provides Digital Enabled Services under these Conditions, these Digital Enabled Services require the collection, transfer and ingestion of building, equipment, system time series, and other data to Company's cloud-hosted software applications. **The Client consents to and grant the Company the right to collect, transfer, ingest and use such data to enable the Company and its affiliates and agents to provide, maintain, protect, develop and improve the Digital Enabled Services and products and services. The Client acknowledges that, while Digital Enabled Services generally improve equipment performance and services, Digital Enabled Services do not prevent all potential**

malfunction, insure against all loss, or guarantee a certain level of performance. The Client will be solely responsible for the establishment, operation, maintenance, access, security and other aspects of the Client's computer network (“**Network**”), will appropriately protect hardware and products connected to the Network and will supply the Company secure Network access for providing Company's Digital Enabled Services. As used herein, “Digital Enabled Services” mean services provided hereunder that employ the Company's software and related equipment installed at the Client's facilities and the Company's cloud-hosted software offerings and tools to improve, develop, and enable such services. Digital Enabled Services may include, but are not limited to, (a) remote servicing and inspection, (b) advanced equipment fault detection and diagnostics, and (c) data dashboarding and health reporting. If the Client accesses and uses Software that is used to provide the Digital Enabled Services, the Software Terms (defined below) will govern such access and use.

- 16.2 **Company Digital Solutions.** Use, implementation, and deployment of the software and hosted software products (“**Software**”) offered under these Conditions shall be subject to, and governed by, the Company's standard terms for such Software and Software related professional services in effect from time to time at www.johnsoncontrols.com/techterms (collectively, the “**Software Terms**”). Specifically, the Company General EULA set forth at www.johnsoncontrols.com/buildings/legal/digital/generaleula governs access to and use of software installed on your premises or systems and the Company's Terms of Service set forth at www.johnsoncontrols.com/buildings/legal/digital/general/tos govern access to and use of hosted software products. The applicable Software Terms are incorporated herein by this reference. Other than the right to use the Software as set forth in the Software Terms, the Company reserves, and its licensors reserve, all right, title, and interest (including all intellectual property rights) in and to the Software and improvements to the Software. The Software that is licensed hereunder is licensed subject to the Software Terms and not sold. If there is a conflict between the other terms herein and the Software Terms, the Software Terms shall take precedence and govern with respect to rights and responsibilities relating to the Software, its implementation and deployment and any improvements thereto.
- 16.3 Notwithstanding any other provisions of these Conditions, unless otherwise agreed, the following terms apply to Software that is provided to the Client on a subscription basis (i.e., a time limited license or use right), (each a “**Software Subscription**”):
- 16.3.1 Each Software Subscription provided hereunder will commence on the date the initial credentials for the Software are made available (the “**Subscription Start Date**”) and will continue in effect until the expiration of the subscription term noted in the applicable statement of work, order or other applicable ordering document.

At the expiration of the Software Subscription, such Software Subscription will automatically renew for consecutive one (1) year terms (each a “**Renewal Subscription Term**”), unless either party provides the other party with a notice of non-renewal at least ninety (90) days prior to the expiration of the then-current term. To the extent permitted by applicable law, Software Subscriptions purchases are non-cancellable, and the sums paid non-refundable. Fees for Software Subscriptions shall be paid annually in advance, invoiced on the Subscription Start Date and each subsequent anniversary thereof. The Client will pay all invoiced amounts within thirty calendar days after the date of invoice. Payments not made within such time period shall be subject to late charges as set forth in the Software Terms. Unless otherwise agreed by the parties in writing, the subscription fee for each Renewal Subscription Term will be priced at our Company’s then-applicable list price for that Software offering. Any use of Software that exceeds the scope, metrics or volume set forth in these Conditions and applicable SOW will be subject to additional fees based on the date such excess use began.



17. | Monitoring Services (if applicable)

In this **Condition 17**, the following words and expressions have the following meanings:

“**Alarm Response Documentation**” means the documents produced by the Company which sets out the Keyholder details, the alarm response plan as agreed between the Company and the Client and other associated documents.

“**Confirmed Alarm**” has the meaning given to it in the Alarm Response Documentation.

“**False Alarm**” has the meaning given to it in the Alarm Response Documentation.

“**Keyholder**” means the person(s) designated by the Client that should be contacted by the Company as set out in the Alarm Response Documentation.

“**Monitoring Centre**” means the Company’s alarm receiving centre, remote video receiving centre, or any other monitoring centre the Company may use from time to time.

“**Monitoring Services**” means the remote monitoring of relevant equipment or systems, including building automation, heating, ventilation and air-

conditioning (HVAC) equipment, industrial refrigeration, and fire, break-in, or other personal protection security systems for the notification of alarms and events through the Monitoring Centre.

“**Standards**” means the relevant British Standards issued by the British Standards Institution and industry standards as recognised by the National Security Inspectorate which are applicable to the Monitoring Services at the time the Monitoring Services are provided to the Client.

“**System**” means the system of hardware and software installed at the Client’s premises and as set out in the Quotation or Alarm Response Documentation.

- 17.1 Where the Company provides Monitoring Services to the Client, this **Condition 17** shall apply.
- 17.2 The Company will use reasonable endeavours to provide the Monitoring Services in accordance with the relevant and applicable Standards.
- 17.3 If the Company provides Monitoring Services in relation to any equipment in the Client’s premises which the Company has not expressly agreed to maintain under the Contract: (the “**Excluded Equipment**”):
- 17.3.1 the Company assumes no responsibility whatsoever for the maintenance, operation, actuation, non-actuation, or needless or erroneous actuation of the Excluded Equipment, and this is the sole responsibility of the Client;
- 17.3.2 the Monitoring Services may be terminated at any time by the Company if, as a result of the Client’s failure to maintain the Excluded Equipment in good operating condition, the Company is unable to provide the Monitoring Services. The Company shall not be liable for any damages or subject to any penalty as a result of any such termination or inability to provide the Monitoring Services; and
- 17.3.3 any repairs to or the replacement of the Excluded Equipment by the Company will be charged to the Client on a time and materials basis at the Company’s then current rates.
- 17.4 If the Company is not providing any maintenance services under the Contract, the Client shall maintain the System in good working order and ensure the System is capable of receiving the Monitoring Services at all times.
- 17.5 Prior to the commencement of the Monitoring Services, the Client will test all detection devices, sensors, or other equipment connected to the

Monitoring Service according to the procedures prescribed or notified by the Company to the Client prior to setting the System. The Client must notify the Company promptly if such devices, sensors or equipment fails to respond to any such test. The Client is responsible for having in place and maintaining the necessary connections and equipment required to transmit signals from the System to the Monitoring Centre. The Client shall also be responsible for actioning any required IP address assignments and additional network software licencing.

- 17.6 The Company shall only be required to carry out the actions at **Conditions 17.7, 17.8 and 17.9** where the Alarm Response Documentation has been entered into by the Company and the Client and the information required in order for the Company to respond as agreed in the Alarm Response Documentation has been provided. The Company shall have no Liability to the Client for any failure to contact Keyholders where accurate and updated Keyholder details have not been provided by the Client to the Company. It is the Client's sole responsibility to ensure that the Keyholder details provided to the Company are correct and remain up-to-date at all times.
- 17.7 If a Confirmed Alarm registers at the Monitoring Centre, the Company will use reasonable endeavours to contact the Client's Keyholder as agreed in the Alarm Response Documentation, to verify whether or not the alarm is a False Alarm.
- 17.8 If the Company has been unable to confirm that the Confirmed Alarm is a False Alarm pursuant to **Condition 17.7**, the Company will use reasonable endeavours to notify the appropriate persons (such as the police, fire department, other private security service or emergency response provider and/or Keyholder, as relevant to the type of Confirmed Alarm) as agreed in the Alarm Response Documentation.
- 17.9 Where an alarm is triggered but that alarm is not a Confirmed Alarm, the Company will at its sole discretion, contact the Client's Keyholder as agreed in the Alarm Response Documentation. If the Company is unable to contact the Keyholder promptly, or is unclear regarding the nature of the response received upon such contact, the Company shall use reasonable endeavours to follow the process agreed with the Client in the Alarm Response Documentation.
- 17.10 If the Company fails to contact the Client's Keyholder, the Company will use reasonable endeavours to notify the appropriate persons (such as the police, fire department, or other private security service or emergency response provider, as relevant to the type of Confirmed Alarm) as agreed in the Alarm Response Documentation. If a guard response service is being provided, the Company will, for an alarm that requires police response, use reasonable endeavours to dispatch a Company representative to make an investigation

of the exterior of the premises from their vehicle. Upon evidence of an attack, the Company will use reasonable endeavour to notify the appropriate police department. The Company will not arrest or detain any person.

- 17.11 The Client acknowledges that the Company will have no Liability pertaining to recording (or failure to record) or publication of any two way voice communications, internet or other video recordings, or the quality of such recordings, if any.
- 17.12 The Client acknowledges that the System may not operate with any additional or replacement hardware or software provided by any party other than the Company.
- 17.13 If the Client cancels any Monitoring Services, this may prevent the Client from continuing to use the System. The Company shall have no Liability to the Client for any losses suffered as a result of the Client being unable to use the System due to it cancelling a Monitoring Service.
- 17.14 The Client acknowledges that local laws and governmental policies may restrict or limit the Company's ability to provide certain Monitoring Services and/or necessitate modified or additional services and expense to the Client. The Client also acknowledges that the Company may employ measures in accordance with the Standards in order to help reduce occurrences of False Alarms, including but not limited to, implementation of industry recognised default settings on alarm panels, including those authorised under the relevant Standards, implementation of "partial clear time bypass" procedures of the Monitoring Centre, and/or other similar measures employed by the Company periodically at the Company's sole discretion. The Client acknowledges that these measures may result in no alarm signal being sent from an alarm zone in the Client's premises after the initial activation until the Client manually resets the alarm system.
- 17.15 The Client understands that, upon receiving notification that a fire or carbon monoxide signal has been received by the Company, the police, fire department or other responding authority may forcibly enter the Client's premises. The Company shall have no Liability to the Client for any damage to property resulting from a responding authority forcibly entering the premises following a fire or carbon monoxide signal.
- 17.16 If the Client chooses the Company approved cellular backup service, alarm signals may be transmitted to the Monitoring Centre from Client's premises over a cellular communications network if the Client's primary telephone service is interrupted.
- 17.17 The Client represents and warrants that it has obtained all consents and has the right to disclose to the Company all personal information disclosed

hereunder concerning individuals, employees or other third parties including all formation and included in the Client's medical list (if applicable), and permits the Company to collect (including consent to record telephone conversations with the Company) use, disclose and transfer such personal information, and expressly authorises the Company to use such personal information to administer the relationship and the Contract between the Client and the Company, including, but not limited to, contacting the Client's personnel at the telephone numbers and e-mail addresses provided, using SMS, text, pre-recorded messages, or automated calling devices to deliver messages to set/confirm a service or installation appointment, and/or to provide information or offers about products and services of interest to the Client. The Client acknowledges and agrees that the Company may share all such information with the Company's Group Companies.

17.18 The Client acknowledges that the Monitoring Services are not guaranteed to be uninterrupted, and may be subject to periods of downtime.

17.19 The Client acknowledges that the Company shall have no Liability to the Client whatsoever in relation to any losses, costs liabilities or expenses suffered as a result of downtime in the Monitoring Services/ability of the System to detect and or send alarms:

- 17.19.1 arising out of connectivity issues, irrespective of whether they have been caused by the Company (including but not limited to issues with internet, phone lines, phone signals and loss of electricity);
- 17.19.2 arising out of network issues (irrespective of whether they have been caused by the Company);
- 17.19.3 arising out of tampering of the System by the Client or a third party;
- 17.19.4 during any other periods of scheduled downtime whatsoever that have been notified by the Company to the Client (for example during upgrades, maintenance, or repairs); or
- 17.19.5 in the event of non-payment by the Client of any invoices in accordance with **Condition 8**.

17.20 The Company will (where reasonably practicable) notify the Client of any loss of connectivity or any downtime of the System in accordance with the relevant Standards. Upon notification from the Company, the Client will be responsible for putting in place suitable temporary security measures. The Company shall have no Liability to the Client for any losses, damages, costs or expenses the Client may suffer due to a failure by the Client to put in place appropriate security measures.

17.21 The Company shall have no Liability to the Client for any losses, damages, costs or expenses the Client may suffer as a result of any deficiency in the System resulting from the Client's own instructions or by those a third party (e.g. the position of motion sensors).

17.22 The Client acknowledges that the successful provision of the Monitoring Services is contingent on the Client providing the Company with accurate, timely and sufficiently detailed information on request.

17.23 The Client acknowledges that the Monitoring Services are not a substitute for employing common sense safety practices, and the Client will take all reasonable steps to ensure the premises are kept safe and secure.

17.24 If the Quotation has been signed on behalf of the Client by a property manager of the premises which will be receiving the Monitoring Services, or a Purchase Order has signed by such property manager and the Company, the Client and the property manager warrants and represents that it has the express agency and authority to bind the Client to the terms of the Contract and to the terms of any such Quotation and/or Purchase Order which the property manager or its representatives may sign.



18. | Confidentiality

18.1 Each party will, subject to **Condition 18.2**:

- 18.1.1 only use the other party's Confidential Information for the purpose of performing its obligations and exercising its rights under the Contract;
- 18.1.2 keep the other party's Confidential Information secret, safe and secure; and
- 18.1.3 not disclose the other party's Confidential Information to any other person.

18.2 Each party may disclose the other party's Confidential Information:

- 18.2.1 to the extent required by law, by an order of a court of competent jurisdiction or by any securities exchange, listing authority, governmental or regulatory authority to which it is subject or to which it submits; and
- 18.2.2 to those of its officers, directors, employees and professional advisers and, in our case, our agents and sub-contractors, who need access to that Confidential Information so that it can perform its obligations and exercise its rights under the Contract. A party

disclosing the other party's Confidential Information under this **Condition 18.2.2** will procure that each person to whom it discloses that Confidential Information will not do or omit to do anything which if done or omitted to be done by that party would be a breach of this **Condition 18**.

- 18.3 For the purposes of this **Condition 18**, "**Confidential Information**" means the terms of the Contract and any information that relates to a party (or any of its Group Companies or businesses) and which is disclosed to the other party in connection with the Contract and any trade secret where the trade secret holder is the party disclosing the trade secret or any of its Group Companies, but excluding information that:
- 18.3.1 is at the relevant time in the public domain (other than by virtue of a breach of this **Condition 18**);
 - 18.3.2 was received by the other party from a third party who did not acquire it in confidence; or
 - 18.3.3 is developed by the other party without any breach of the Contract.
- 18.4 Each party acknowledges and agrees that damages alone would not be an adequate remedy for breach of this **Condition 18** by that party. Accordingly, the other party will be entitled, without having to prove special damages, to equitable relief (including injunction and specific performance) and to any remedies available to a trade secret holder for any breach or threatened breach of this **Condition 18** by the first party.



19. | Non-solicitation

- 19.1 The Client agrees that it will not, and will procure that no Group Company of the Client will, without the prior written consent of the Company, directly or indirectly, and whether alone or in conjunction with, or on behalf of, any other person during the Term or for a period of 12 months following the date of termination of the Contract, solicit or entice, or endeavour to solicit or entice, away from the Company or any of its Group Companies, any person employed by the Company or any of its Group Companies in the then preceding 12 months. For the purposes of this **Condition 19** "**solicit**" or "**entice**" means the soliciting or enticing of such person with a view to engaging such person as an employee, director, sub-contractor, consultant or independent contractor or through a company owned by such person or their family, but will not apply in the case of any such person responding without enticement to a job advertisement which is capable of being responded to by members of the public (or sections thereof) generally.



20. | Notice

- 20.1 Subject to **Condition 20.2**, any notice or other communication to be given by either Party will be in writing and will be deemed given as of (a) the date delivered if delivered by hand, or reputable courier service, (b) the date sent if sent by email or such other recognised electronic platform (including DocuSign, Adobe Sign) (with transmission confirmed), (c) the second Business Day (at the place of delivery) after deposit with an internationally recognised overnight delivery service, or (d) the fifth (5th) Business Day after mailing if mailed by registered or certified mail, postage prepaid and return receipt requested, addressed to the other Party at the addresses notified to the other in writing. This **Condition** is not intended to govern day-to-day business communications.
- 20.2 This **Condition 20** will not apply to the service of any proceedings or other documents in a legal action to which the Civil Procedure Rules apply.



21. | General

- 21.1 The Contract constitutes the entire agreement between the parties and supersedes any prior agreement or arrangement in respect of its subject matter and:
- 21.1.1 neither party has entered into the Contract in reliance upon, and it will have no remedy in respect of, any misrepresentation, representation or statement which is not expressly set out in the Contract;
 - 21.1.2 the Contract excludes any information in any form (including in relation to emails or any other correspondence) passing or communicated between the parties other than as specifically set out in the Quotation;
 - 21.1.3 the only remedies available for any misrepresentation or breach of any representation or statement which was made prior to entry into the Contract and which is expressly set out in the Contract will be for breach of contract; and
 - 21.1.4 nothing in this **Condition 21.1** will be interpreted or construed as limiting or excluding the liability of any person for fraud or fraudulent misrepresentation.
- 21.2 A delay in exercising or failure to exercise a right or remedy under or in connection with the Contract will not constitute a waiver of, or prevent or restrict future exercise of, that or any other right or remedy, nor will the

single or partial exercise of a right or remedy prevent or restrict the further exercise of that or any other right or remedy. A waiver of any right, remedy, breach or default will only be valid if it is in writing and signed by the party giving it and only in the circumstances and for the purpose for which it was given and will not constitute a waiver of any other right, remedy, breach or default.

- 21.3 If any term of the Contract (including any exclusion from, or limitation of, liability set out in **Condition 10**) is found by any court or body or authority of competent jurisdiction to be illegal, unlawful, void or unenforceable, such term will be deemed to be severed from the Contract and this will not affect the remainder of the Contract which will continue in full force and effect.
- 21.4 No variation to the Contract will be effective unless it is in writing and signed by a duly authorised representative on behalf of each of the parties.
- 21.5 Nothing in the Contract and no action taken by the parties in connection with it or them will create a partnership or joint venture between the parties or give either party authority to act as the agent of or in the name of or on behalf of the other party or to bind the other party or to hold itself out as being entitled to do so.
- 21.6 Each party agrees that it is an independent contractor and is entering into the Contract as principal and not as agent for or for the benefit of any other person.
- 21.7 Save as provided in **Condition 10.7**, the parties do not intend that any term of the Contract will be enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person.
- 21.8 The Company's rights and remedies set out in these Conditions are in addition to and not exclusive of any rights and remedies provided by law.
- 21.9 The Client will not be entitled to assign, transfer, charge, hold on trust for any person or deal in any other manner with any of the Client's rights under the Contract. The Client will not be entitled to sub-contract and/or assign any of the Client's obligations under the Contract.



22. | Governing Law and Jurisdiction

- 22.1 The Contract and any non-contractual obligations arising out of or in connection with it will be governed by the law of England and Wales.

- 22.2 The courts of England and Wales have exclusive jurisdiction to determine any dispute arising out of or in connection with the Contract (including in relation to any non-contractual obligations).



23. | Compliance with export control regulations

- 23.1 The Client is required to comply with the applicable international export and/or embargo regulations, in particular the applicable UK, EU and US regulations. The Company reserves the right to terminate or withdraw from the Contract if it becomes apparent that the Client or the end user of the Goods or Services is a person or entity listed under UK, US, European, and/or international export or embargo regulations or that the delivery is intended for a country to which delivery is prohibited under these regulations. The Client undertakes to inform the Company in due time if Deliverables are to be passed on to an end user or transferred to such country and if this could violate the aforementioned regulations.



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