

## General Terms & Conditions – Installation

Johnson Controls Deutschland GmbH, Johnson Controls Systems & Service GmbH, Total Feuerschutz GmbH,  
ADT Sensormatic GmbH

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### 1. Scope of Application

1.1. All current and future construction or plant-related contracts for work and services within the meaning of §§ 631 ff. BGB (German Civil Code) are executed by us under the following terms and conditions and on the basis of the General Technical Terms of Contract (*Allgemeine Technische Vertragsbedingungen*, DIN 18299 ff.).

1.2. Any terms and conditions contrary to or deviating from our terms and conditions shall not apply unless we have expressly agreed to their application in writing. The following terms and conditions shall also apply, if we perform the services or deliveries to the customer without reservation knowing that the customer's terms and conditions conflict with or deviate from our terms and conditions.

1.3. Individual agreements with the customer always take precedence over these terms and conditions.

1.4. All agreements and ancillary agreements as well as all amendments must be made in writing. This also applies to the waiver of this written form requirement.

1.5. Our offers are always non-binding. Offers and cost estimates may only be forwarded to third parties with our consent.

### 2. Scope of Services

2.1. The scope of work or services owed by us (collectively referred to as "services") is conclusively described in our offer.

2.2. We shall be entitled to render services in parts unless this is excluded by a reasonable interest of the customer.

### 3. Remuneration

3.1. Our remuneration is calculated on the basis of the contractual unit prices and the services actually performed

3.2. Prices do not include taxes, fees, customs 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 customer.

3.3. If the quantity estimate is exceeded by more than 10 %, up our request a new price shall be agreed upon, taking into account the additional or reduced costs.

3.4. In the event of a shortfall of more than 10 % in the quantity estimate, we shall be entitled to increase the unit price for the quantity of the service or partial service actually performed, unless we are compensated by increasing the quantities in other order numbers (items) or in some other way. The increase in the unit price shall essentially correspond to the additional amount resulting from the distribution of the construction site set-up and construction

site overhead costs and the general business costs (*Allgemeine Geschäftskosten*) over the reduced quantity.

3.5. We charge for our services on the basis of time and materials and based on the following:

a) the working time shall be remunerated in accordance with our charging rates applicable at the time of conclusion of the contract;

b) Waiting and travel times shall be deemed working time provided that we need to remunerate them as working time in accordance with the applicable labor law regulations;

c) expenses and costs (e.g. expenses for examinations and official approvals) are to be reimbursed by the customer;

d) necessary expenses, in particular expenses for transportation, transport of luggage, tools and small materials are to be reimbursed by the customer;

e) the materials used as well as special tools, measuring and testing equipment shall be remunerated in accordance with the price list applicable at the time of conclusion of the contract, alternatively in the amount of the costs demonstrably incurred plus reasonable surcharges.

3.6. Our calculation is based on the labor, material and ancillary costs and conformity with statutory obligations prevailing at the time of conclusion of the contract. In the event of an increase in these costs, we shall be entitled to invoice our remuneration on the basis of the increased costs, at the earliest 4 months after conclusion of the contract. For the avoidance of doubt, this shall include price adjustments due to additional, increased or new customs duties, tariffs, charges, quota or other government actions or policies or similar events outside our control.

3.7. If services for which a lump sum has been agreed depend on a service or partial service that are subject to a unit price, we shall be entitled to request an adequate adaptation of the lump sum in connection with the change in the unit price.

3.8. For ordered scope changes within the meaning of § 650b BGB (German Civil Code), our remuneration for additional and reduced services shall be calculated exclusively on the basis of an update of the original order calculation.

### 4. Payment Terms

4.1. Unless agreed otherwise, 30% of the contract price shall be payable as advance payment within 3 days after signature of the contract, 30% upon commencement of installation, 30% as progress payments and 10% after acceptance.

4.2. We reserve the right to invoice progress payments based on the progress of the works or against a schedule of values (Billing Schedule) to be agreed between the parties.

4.3. Payments are due within 30 days after the date of issuance of the corresponding invoice, without deduction.

4.4. If the customer objects to an invoice in good faith ("Objection"), it shall be obliged to explain the Objection to us in detail and in writing by the end of the payment period. In the event that the customer fails to raise an objection within the time limit, the invoice shall be deemed accepted, correct and payable, i.e. the customer waives any corresponding objections to the invoice. Any other rights of the customer remain unaffected. We are obliged to expressly inform the customer of this exclusion of objections.

4.5. Any measurements submitted in advance for partial invoices shall be checked by the customer within two weeks of delivery, after which the measurements shall be deemed to have been accepted. Different inspection periods may be agreed for measurements for the final invoice, depending on the complexity, but no longer than six weeks after delivery.

4.6. Interest on arrears shall be charged in accordance with the statutory provisions. In the event of default of payment by the customer - under this or other contracts - we shall be entitled to refuse performance under this or the other contracts or to terminate the contract.

4.7. We shall be entitled to demand security in accordance with § 650f BGB. The provisions of § 650f BGB shall apply mutatis mutandis if the service assigned to us is not a building or part thereof within the meaning of § 650f BGB or planning services. § Section 321 BGB remains unaffected.

#### **5. Setoff/Retention Rights**

5.1. The customer shall only be entitled to set-off rights if his counterclaims have been legally established, are undisputed or have been acknowledged by us.

5.2. The customer shall only be entitled to exercise a right of retention or a right to refuse performance if the statutory requirements are met and if its counterclaim is based on the same contractual relationship.

#### **6. Performance of Services/Obligations to Cooperate**

6.1. The customer shall ensure all structural, technical and operational conditions for the execution of our services as set out in our offer.

6.2. We are entitled to commission subcontractors with the performance of services. However, we remain the sole contact partner of the customer.

#### **7. Terms and Deadlines**

7.1. The delivery dates stated by us are non-binding.

7.2. Delays in performance due to force majeure or due to unforeseeable and unavoidable events such as operational disruptions, war, riots, terror, strikes, lockouts, lack of means of transport, pandemics and epidemics, difficulties in procuring commodities and materials, official orders, late deliveries by our suppliers or other circumstances which render our contractual performance impossible or considerably more difficult shall not qualify as our default. Claims for damages shall be excluded.

7.3. If there are circumstances impeding the execution of our services, we will notify the customer accordingly.

7.4. In the event of delays in performance in accordance with Section 7.2 or an impediment, any agreed deadlines for performance shall be extended; the extension of the deadline shall be calculated on the basis of the duration of the impediment with a supplement for the resumption of work and any postponement to a less adequate season of the year.

7.5. If performance is probably interrupted for a longer time period without it becoming permanently impossible, the services already performed shall be invoiced according to the contract prices. In addition, costs already incurred and which are included in the contract prices for the part of the services not yet performed shall be reimbursed.

7.6. If the customer is responsible for the impeding circumstances, we shall be entitled to compensation for the damage incurred. Our right to reasonable compensation in accordance with § 642 BGB remains unaffected.

7.7. If an interruption lasts longer than 3 months, the contract may be terminated in writing by either party. Settlement shall be governed by Sections 7.5 and 7.6. If we are not responsible for the interruption, the costs for clearing the construction site shall also be reimbursed insofar as they are not included in the remuneration for the services already performed.

7.8. If we are in delay with the performance of the services, the customer shall be entitled, after prior written warning and threat of termination, to refuse further performance of the services and terminate the contract; withdrawal from the contract due to delayed performance shall be excluded.

#### **8. Acceptance / Passing of Risk**

8.1. The customer may only refuse acceptance in the event of a material defect. Acceptance shall be deemed if the customer fails to accept the services within a reasonable period of time specified by us, although he is obliged to do so. Public-law releases, tests and certificates or permits for operation are not a prerequisite for acceptance.

8.2. We are entitled to request partial acceptance for functionally completed parts of services.

8.3. If delivery and installation are interrupted at the request of the customer or for reasons for which the customer is responsible, for the period of interruption the risk shall pass to the customer.

8.4. If the services already performed by us in whole or in part are damaged or destroyed before acceptance due to force majeure or other objectively unavoidable circumstances for which we are not responsible, the performed parts of the service shall be remunerated according to the contract prices including the costs already incurred by us and included in the contract prices of the non-performed part of the service; in this case, there shall be no mutual obligation to compensate for other damages.

8.5. The risk of accidental loss and accidental deterioration of items and materials provided by the customer shall be borne by the customer.

### **9. Defects Liability**

9.1. We shall be liable for the equipment manufactured by us or services rendered by us only if used under usual or known operating conditions at the time of conclusion of the contract. Damage and/or wear due to excessive or unforeseen stress as well as deviations (tolerances) that are permissible or customary according to the relevant technical standards do not constitute a defect. For performance data listed in our offers, a construction tolerance of 5% (five percent) applies in addition to the measurement tolerances according to EN 13771-1:2003 or tolerances from comparable technical regulations. Claims for defects shall not exist in the event of only insignificant deviation from the agreed quality or of only insignificant adverse effect on the usability.

9.2. We shall not assume any liability for defects for components, devices or spare parts provided by the customer or components, devices or spare parts used at the customer's instigation or instruction. This exclusion shall also apply insofar as the components, devices or spare parts used at the instigation or instruction of the customer have caused a defect in the services rendered by us and/or existing installations.

9.3. A guarantee or agreement on the quality of an item shall only exist if this has been expressly designated by us in writing in the offer or contract. All documents that relate to our offer, such as catalogs, specifications, illustrations, drawings, weight and dimension specifications, assembly plans, circuit diagrams and other plans are approximately relevant only, and do not constitute an agreement on quality unless they are expressly designated as binding.

9.4. In the event of a defect, we shall be given the opportunity to remedy the defect within a reasonable period of time. The rights of the customer shall be governed by the statutory provisions; however, withdrawal from the contract shall be excluded. Section 10 shall apply to claims for damages due to defects.

9.5. If it turns out that a notice of defect was unjustified, the customer shall pay for the expenses incurred as a result in accordance with the billing rates applicable at the time of the unjustified notice of defect.

9.6. The expenses necessary for the purpose of rectification shall be borne by the customer insofar as they are increased because the supplies or services were relocated to a place other than the customer's registered office or place of business at the instigation or request of the customer, unless such relocation is in accordance with its agreed or intended use.

9.7. Claims for defects shall become time-barred after the expiry of one (1) year.

### **10. Liability**

10.1. We shall be liable for intent, gross negligence, personal injury and damage under the Product Liability Act (ProdHaftG) in accordance with the statutory provisions.

10.2. In case of other (non gross) negligence, the following shall apply:

a) We shall only be liable in the event of a breach of a cardinal obligation and only for the foreseeable damage typical for the contract. A cardinal obligation is an obligation the fulfillment of which makes the proper execution of the contract possible in the first place and the observance of which the contractual partner regularly relies on and may rely on.

b) Our liability is limited to 1 million euros.

c) We are not liable for indirect or consequential damages such as loss of profit, business interruption, loss of use, loss of production or damages resulting from loss of data.

10.3. The above stipulations do not constitute a change of the burden of proof to the detriment of the customer.

### **11. Retention of Title**

11.1. Title to all delivered items shall remain vested in us until receipt of all payments under the business relationship with the customer. If a current account relationship exists in the context of the business relationship, title to all items delivered by us shall remain vested in us until receipt of all payments from such current account relationship with the customer until the recognized balance is settled.

11.2. The customer shall treat the items delivered by us with due care and diligence until acceptance or transfer of title and to insure them at his own expense against damage by fire, storm, water, and theft to their full replacement value.

11.3. In the event of seizures or other interventions by third parties, the customer must notify us immediately in writing if a transfer of ownership has not yet taken place. To the extent the third party is not in a position to reimburse us for the judicial and extrajudicial costs of a lawsuit pursuant to § 771 ZPO (German Code of Civil Procedure), the customer shall be liable for the costs and expenses incurred by us.

11.4. The customer shall be entitled to resell and/or process the delivered items in the ordinary course of business; however, he already assigns to us all claims against his customers or third parties from the resale up to the gross invoice amount of our claims, irrespective of whether the delivered item has been resold without or after processing. In the event of processing by the customer, the processing shall be carried out for us. The customer shall keep the newly created item for us with the care of a prudent businessman. The new item shall be deemed items subject to retention of title. The processing/mixing with other items, that do not belong to us, shall in any case create co-ownership of the new item in the ratio of the value of the combined or mixed reserved goods to the value of the other goods at the time of combination or mixing. The customer shall remain entitled to collect the claim even after its assignment. Our right to collect the claim ourselves shall remain unaffected.

However, we will not collect the claim as long as the customer meets his payment obligations from the proceeds collected, is not in default of payment and, in particular, no application for the opening of insolvency proceedings has been filed or payments have not been suspended. If this is the case, we may request that the customer discloses the assigned claims and their debtors, provides all information required for collection and the relevant documents and notifies the debtors (third parties) of the assignment. Insofar as a current account relationship exists between the customer and his buyer in accordance with § 355 HGB (German Commercial Code), the claim assigned to us by the customer in advance shall also relate to the acknowledged balance and, in the event of the buyer's bankruptcy, to the then existing balance surplus.

## 12. Compliance with export control regulations

12.1. The customer has to comply with the applicable international export and/or embargo regulations, in particular the applicable German, EU and US regulations. We reserve the right to terminate or withdraw from the contract if it becomes apparent that the customer or the end user of our services is a person or entity listed under German, 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 customer undertakes to inform us in due time if our deliveries are to be passed on to an end user or transferred to such country and if this could violate the afore mentioned regulations.

12.2. The customer shall not sell, export or re-export, directly or indirectly, to the Russian Federation or for use in the Russian Federation, any goods supplied under or in connection with the Agreement that fall under the scope of Article 12g of Council Regulation (EU) No 833/2014. The same obligations apply in relation to Belarus under Article 8g of Council Regulation (EU) 765/2006. The customer shall undertake its best efforts to ensure that the purpose of this clause is not frustrated by any third parties further down the commercial chain, including by possible resellers. Any violation of this clause shall constitute a material breach of an essential element of this Agreement, and we shall be entitled to all appropriate remedies, including, but not limited to, termination of the Agreement. The customer shall immediately inform us about any problems in applying the requirements of this clause, including any relevant activities by third parties that could frustrate the purpose of this clause. Upon request, the customer shall make available to us any and all requested information concerning compliance with the obligations under this clause within two weeks of such request.

## 13. Software, Digital Solutions and Digital Enabled Services

13.1. Installed Software. Subject to the terms and conditions of the Agreement, and 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 [https://www.johnsoncontrols.com/legal/digital/general-](https://www.johnsoncontrols.com/legal/digital/general-tos/english-for-germany)

[eula](https://www.johnsoncontrols.com/legal/digital/general-tos/english-for-germany) JCI hereby grants to Customer a non-exclusive, non-transferable, non-sublicensable license to use the software installed on premises solely for purposes of using, operating, and maintaining the JCI Product in which the software is installed, or using the software solely for Customer's internal business purposes.

13.2. Digital Enabled Services. If JCI provides Digital Enabled Services under this Agreement, these Digital Enabled Services require the collection, transfer and ingestion of building, equipment, system time series, and other data to JCI's cloud-hosted software applications. Customer consents to the collection, transfer and ingestion and use of such data by JCI to enable JCI to provide, maintain, protect and improve the Digital Enabled Services and its products and services. Customer 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. Customer will be solely responsible for the establishment, operation, maintenance, access, security and other aspects of its computer network ("Network"), will appropriately protect hardware and products connected to the Network and will supply JCI secure Network access for providing its services. Notwithstanding any other provisions herein, JCI shall not be liable or responsible for a Non-JCI Data Failure and Customer shall be responsible for JCI service work to repair or correct a Non-JCI Data Failure, if necessary.

13.3. As used herein, (i) "Digital Enabled Services" mean services provided hereunder that employ JCI software and cloud-hosted software offerings and tools to improve and enable such services. Digital Enabled Service may include, but are not limited to, remote inspection, advanced equipment fault detection and diagnostics, and (c) data dashboarding and equipment health reporting, and (ii) "Non-JCI Data Failure" means the inability or failure of the applicable Digital Enabled Services to obtain data which is not caused by the acts or omission of JCI (e.g., data collection gateway unplugged by Customer or subsystem integration modified by subsystem manufacturer, etc.).

13.4. JCI Digital Solutions. Use, implementation, and deployment of the software and hosted software products ("Software") offered under these terms shall be subject to, and governed by, JCI's standard terms for such Software and Software related professional services in effect from time to time ("Software Terms") that can be found at <https://www.johnsoncontrols.com/legal/digital/general-tos/english-for-germany>.

13.5. JCI 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.



13.6. Notwithstanding any other provisions of this Agreement, unless otherwise set forth in the applicable order, the following terms apply to Software that is provided to Customer on a subscription basis (i.e., a time limited license or use right), (each a "Software Subscription"):

13.7. 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 Order. 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-cancelable and the sums paid nonrefundable. Fees for Software Subscriptions shall be paid annually in advance, invoiced on the Subscription Start Date and each subsequent anniversary thereof. Unless otherwise agreed by the parties in writing, the subscription fee for each Renewal Subscription Term will be priced at Johnson Controls' then-applicable list price for that Software offering. Any use of Software that exceeds the scope, metrics or volume set forth in this Agreement and applicable Order will be subject to additional fees based on the date such excess use began.

#### **14. Confidentiality, Intellectual Property Rights**

14.1. Drawings, technical descriptions, operating instructions, cost estimates and other documents are recognized by the customer as our trade secret and shall be treated confidentially. They must not be copied, reproduced, or made available to third parties without our express written consent, in particular for the purpose of requesting a quotation.

14.2. The customer shall notify us without undue delay of any alleged infringement of intellectual property rights and shall - at our discretion and upon our express request - allow us to conduct any litigation. If this is not possible, the customer shall at least involve us in any litigation in such a way that we are fully informed and have a say in all decisions affecting us even indirectly.

14.3. In the event of an infringement of intellectual property rights, we shall be entitled, at our own discretion, to obtain a right of use for the product concerned, to modify it in such a way that the intellectual property right is no longer infringed or to replace the product with a similar product. If this is not possible for us under reasonable conditions or within a reasonable period of time, the customer shall be entitled to the statutory rights of rescission or reduction of the purchase price, provided that he has enabled us to carry out a modification. Under the afore mentioned conditions, we may also withdraw from the contract.

14.4. Claims of the customer shall be excluded insofar as he is (partly) responsible for the infringement of intellectual property rights or he has not informed us in a reasonable

manner of impending or known infringements of intellectual property rights and/or has not supported us in a reasonable manner in the defense against claims of third parties.

14.5. Claims by the customer are also excluded if the (alleged) infringement of the intellectual property right results from use in conjunction with other products not originating from us or if the product is used in a way that we could not foresee.

14.6. Our obligation to pay damages in the event of culpable infringement of intellectual property rights shall be governed by Section 10.

14.7. Further or other claims of the customer for infringement of intellectual property rights that are not set out herein, are excluded.

#### **15. Data Privacy**

15.1. Johnson Controls as controller: We collect, process and transfer certain personal data of the customer and its personnel in connection with the business relationship between the customer and us (e.g., names, email addresses, telephone numbers) as controller and in accordance with Johnson Controls' Privacy Policy located at <https://www.johnsoncontrols.com/privacy-center/global-privacy-notice>. The customer acknowledges Johnson Controls' Privacy Policy and consents to such collection, processing and transfer to the extent mandatorily required by applicable law. To the extent consent by the customer's personnel to such collection, processing and transfer by Johnson Controls is mandatorily required by applicable law, the customer warrants that it has obtained such consent.

15.2. Johnson Controls as processor: If we are in fact acting as a processor of Personal Data (as defined therein) on behalf of the customer, the terms at [www.johnsoncontrols.com/dpa](https://www.johnsoncontrols.com/dpa) will apply.

#### **16. Miscellaneous**

16.1. We are entitled to obtain information from information institutes (e.g. Creditreform, Schufa) and to provide them with the usual information.

16.2. 1.2. The contract shall remain binding in its remaining parts even if individual points are legally invalid. The invalid provision shall be deemed to be replaced by a valid provision that is economically as equivalent as possible.

16.3. The exclusive place of jurisdiction for all disputes in connection with the contract shall, at our option, be the place of the branch office which received the order, or Ratingen.

16.4. The contractual relations shall be governed by German law to the exclusion of the conflict of laws provisions. The application of the UN Convention on Contracts for the International Sale of Goods is excluded.