3-1-1966

Honeywell-Statitrol Agreement Annotated Draft

Statitrol Corporation

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THIS AGREEMENT is made as of the __________ day of ______, 1966, between Honeywell Inc. (Honeywell), a Delaware corporation, having its principal offices in Minneapolis, Minnesota and Statitrol Corporation (Statitrol), a Colorado corporation, having its principal offices in Denver, Colorado.

WHEREAS, Statitrol owns engineering know-how relating to the manufacture of self-switching, ionization fire detectors (Devices) and other fire detection equipment as set forth in Exhibit B (Equipment) and controls the manufacturing of such Devices and such Equipment, and

WHEREAS, Statitrol owns patent rights including application

Serial No. 391,558, Filed 8-24-64, (Stroh) and application
Serial No. 546,665, Filed 5-2-66, (Blackwell) and may acquire additional patent rights during the course of this agreement, all of such rights being referred to as "Patent Rights", and

WHEREAS, Statitrol desires to sell, and Honeywell desires to purchase, such Devices and Equipment,

NOW, THEREFORE, in consideration of the mutual promises, representations, covenants and conditions hereinafter set forth, it is agreed that:

1. Honeywell will buy and Statitrol will manufacture and sell to Honeywell, at prices set forth in Schedule B, a minimum of 30,000 fire detector units (Units) over a 36 month period. The 36 month period shall commence on the date U.L. listing is granted to the Devices; however, all Units purchased after the date hereof shall apply to reducing the liquidated damages to

OEM - only of devices - not equip

15,000 - 36
be paid by Honeywell for failure to purchase 30,000 Units. Delivery
will be at the rate established in Schedule A. Unit count, for the
purpose of determining the 30,000 Unit minimum, will be determined on
the basis set forth in Schedule B.

2. For the term of this agreement, commencing on the date hereof, Honeywell
is to have the exclusive, world-wide right to use and sell Devices and
Equipment, as well as modifications and subsequent generations of the
Devices and Equipment. In addition, Honeywell is to have the exclusive,
world-wide license to use and sell all "devices" and equipment produced
under Statitrol's Patent Rights and know-how and any changes and/or
improvements thereof, for the term of this agreement. "Equipment" and
"Devices" which are supplied pursuant to a Honeywell purchase order are to
be built in accordance with specifications and are to comply with per­
formance standards set forth in Schedule C. Units which are delivered
and which do not conform with these specifications and standards shall
be deemed to be Units of equipment which Statitrol has failed to supply
in response to a purchase order.

3. Statitrol is hereby appointed Honeywell's exclusive sales agent, for
Devices and Equipment, for sales to Original Equipment Manufacturers
(OEM's). Honeywell agrees to sell Devices and Equipment, in the quanti­
ties set forth in Schedule A, to Statitrol for 5% less than the same
items are sold by Honeywell to its branches. Honeywell will in no way
control the prices charged by Statitrol to OEM's for these items. No
customer of Statitrol is to be classed an OEM unless it agrees to purchase
500 Units per year. Statitrol agrees to purchase 16,500 Units for sale
to OEM's, at least at the rate specified in Schedule A. Statitrol shall advise Honeywell, at least thirty days prior to each three-month period, of the number and type of Units it wishes to purchase from Honeywell during such three-month period.

4. To avoid the burden and the expense involved in litigating the question of damages, the following liquidated damages, in the event of failure of performance, are hereby agreed upon: Statitrol will pay Honeywell $35.00 for each Unit of equipment it fails to supply in response to a Honeywell purchase order, within the limits of Schedule A. Honeywell will pay Statitrol $5.00 for each Unit it fails to purchase by reason of order cancellation, without reasonable justification, during the term of this agreement. Statitrol will pay Honeywell $10.00 for each Unit it fails to accept for sale to OEM's during the contract period. Liquidated damages will be assessed against the parties on a quarterly basis.

5. In the event Honeywell desires to increase the number of Units it wishes to purchase or if it desires to accelerate the delivery rate set forth in Schedule A, Honeywell will give a minimum of three months advance notice, by means of a purchase order, for up to a 50% increase in quarterly requirements and a minimum of six months notice for more than a 50% increase in quantity or rate of delivery over those specified in Schedule A.

6. In addition to Statitrol's statutory and Common Law obligations as a manufacturer and a seller, Statitrol agrees to warrant all Devices and Equipment sold by it under this agreement to be free from defects in workmanship and material. Devices and Equipment that are returned to Statitrol within a period of eighteen months after date of shipment by Statitrol and which are found to be defective in workmanship or material
will be repaired or replaced free of charge and return shipped, transportation prepaid.

7. Statitrol agrees to maintain, during the term of this agreement and for a period of ten years thereafter, facilities and adequate parts for the repair or replacement of Devices and Equipment.

8. Statitrol agrees to indemnify and hold Honeywell and its customers harmless for all costs and expenses resulting from claims of patent infringement growing out of this agreement. Statitrol agrees that Honeywell shall retain, as an indemnity fund, $2.00 per Unit sold to Honeywell, until such fund reaches $60,000. This fund is to be used for the defense of any patent infringement claim or suit covering Devices and Equipment covered by this agreement. The provision for this fund shall not limit Statitrol's liability in any way. If Honeywell has not been informed of the institution of any such claim or suit within three years after the termination date of this agreement, Honeywell shall turn over to Statitrol, without restriction, the total amount of this fund. Statitrol agrees that should any such claim or suit be brought against Honeywell or its customers, Honeywell will have the right to select the lawyer or lawyers to defend itself against such suit or claim.

9. Statitrol agrees to provide qualified personnel to conduct training classes, of up to three day's duration, for Honeywell personnel, four times per year during the term of this agreement, all at no cost to Honeywell. Unless the parties agree to the contrary, training will be conducted in Minneapolis or at some other Honeywell facility specified by Honeywell.
10. Honeywell shall have the option, which must be exercised at least sixty days prior to the expiration of the initial term of this agreement, to renew this agreement for an additional term of 36 months or for any shorter period of time up to 36 months. Any such renewal shall be on the same terms and conditions as set forth herein, except that the number of Units Honeywell will be required to purchase, on a yearly basis, will be 10,000 Units, of which Statitrol agrees to sell 6,000 Units to OEM's.

11. Honeywell will issue purchase orders at least every three months which will set forth specific quantities of Devices and each item of Equipment to be delivered (to both Honeywell and Statitrol) and the time and place of delivery. Honeywell will only be obligated to pay invoices which have been issued for Devices and Equipment which were delivered in response to Honeywell purchase orders. The sale price of Units delivered to Statitrol will be a credit to Honeywell against the amount owing under such invoices. Purchase orders issued hereunder, including the standard terms and conditions of purchase appearing thereon, shall be deemed to be a part of this contract.

12. It is agreed that the Devices and Equipment may be marketed by Honeywell under the Honeywell name and that advertising, technical literature and other sales promotion material need not refer to Statitrol.

13. If one or more of the items listed in Schedule B should become available to OEM's at prices equal to or less than those listed in Schedule B, this agreement will be voidable by Honeywell. This agreement shall also be voidable by Honeywell if U.L. approval of Statitrol's Devices is not forthcoming by April 1, 1967.

June 1, 1967
14. If Statitrol should decide to stop supplying Devices and Equipment to Honeywell or if Statitrol should fail to supply Honeywell with Devices and Equipment in the quantities called for by purchase orders issued by Honeywell for two consecutive three-month periods, then, to assure Honeywell of a continuing supply of Devices and Equipment, Statitrol agrees to license Honeywell to manufacture, or have manufactured, Devices and Equipment pursuant to an agreement attached hereto and forming an Appendix to this agreement and, in addition, Statitrol agrees to deliver over its tooling to Honeywell. Honeywell agrees that it will then pay Statitrol the reasonable cost to reproduce such tooling. Nothing in this paragraph shall be construed to reduce or limit Statitrol's responsibilities in any way.

15. This agreement shall be binding upon and shall inure to the benefit of any corporation, company or entity into which either Statitrol or Honeywell may be merged or consolidated or which purchases that part of the assets of either of them to which this agreement relates, but this agreement may not otherwise be assigned without the written approval of the other party.

IN WITNESS WHEREOF, the parties hereto have executed this agreement by their proper officers duly authorized and have caused their corporate seals to be affixed as of the day and year first above written.

HONEYWELL INC.

By ________________________________ JED
Title:

Attest:

______________________________

STATITROL CORPORATION

Attest:

______________________________

By ________________________________ President