

KEYMILE TERMS & CONDITIONS OF SALE

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1 SCOPE AND INTERPRETATION

These terms and conditions govern any quotation made by KEYMILE to the Customer, and are hereby expressly incorporated into any resultant Contract, unless and to the extent otherwise agreed to in writing by KEYMILE.

In these terms and conditions, the following words shall have the following meanings:

"KEYMILE" means Keymile GmbH having its registered offices at Wohlenbergstrasse 3, D-30179 Hanover, Germany;

"Contract" means any contract between KEYMILE and the Customer for the sale and purchase of Products incorporating these terms and conditions.

"Customer" means the organisation to whom KEYMILE has made an offer and/or entered a Contract for the supply of Products;

"Hardware" means those items of hardware (including any embedded software) to be supplied to the Customer by KEYMILE;

"Products" means Hardware and Software together to be supplied to the Customer by KEYMILE;

"Software" means the software to be licensed by KEYMILE to the Customer, including any upgrades, patches, or updates;

"Specification" means KEYMILE's technical specification(s) for the Products and Software.

Words in the singular shall include the plural and vice-versa.

Unless specifically agreed to in writing by KEYMILE, these conditions shall prevail over any terms and conditions contained or referred to in any correspondence or documentation (including purchase orders) that may be issued by the Customer.

2 PRICES

All prices are unless otherwise stated in KEYMILE's quotation or the Contract, in € (euros).

Prices exclude Value Added Tax (V.A.T.), and are for delivery of Products Ex-Works from KEYMILE's nominated production facility, in accordance with INCOTERMS® 2010.

Unless expressly stated in KEYMILE's offer or the Contract, the costs of any type approval or other special to type testing are hereby expressly excluded from the prices for the Products.

3 ORDERING PROCEDURE

Should the Customer wish to purchase KEYMILE's Products, the Customer shall issue a firm written order(s), signed by a duly authorized representative of the Customer, to include as a minimum:

- (a) the Customer's order number
- (b) the delivery or consignment address,
- (c) the detailed itemised list of the ordered Products with the relevant corresponding KEYMILE part number,
- (d) the quantity, unit price and total price of the listed ordered Products and the calculated total price of the order, all in accordance with KEYMILE's valid quotation to the Customer; and
- (e) the Customer's requested delivery date(s).

Any purchase order issued by the Customer must include sufficient information and authority to enable KEYMILE to claim and be paid in accordance with the Contract.

KEYMILE shall wherever possible issue its written order acceptance, or else written reasons for the rejection or clarification of the order, within 5 (five) working days.

The order acceptance will advise KEYMILE's forecast delivery date(s) in respect of the order. A Contract is only formed once KEYMILE has issued written acceptance of an order, and the Contract effective date shall be the date on which KEYMILE issues its written order acceptance. Each order so accepted shall constitute an individually binding Contract.

Due to costs of order administration, KEYMILE can only accept Customer orders with a minimum value of € 500.00 (five hundred euros) (or equivalent) excluding V.A.T. Customers are therefore advised to consolidate orders for spares, etc.

The parties shall, wherever possible, agree a non-binding forecasting process. KEYMILE's quoted delivery lead times may be significantly enhanced where there is such a process.

4 DELIVERY

The estimated delivery time is set out in KEYMILE's order acceptance, issued in accordance with clause 3 above. KEYMILE will use all reasonable endeavours to meet estimated delivery times.

Products shall be delivered Ex-Works at KEYMILE's nominated production facility, in accordance with INCOTERMS® 2010, which shall become an integral part of these conditions. In the event the Customer requires KEYMILE to arrange transport of delivered Products to the Customers' site or other destination, this can be offered as a service to the Customer following delivery, on fair and reasonable terms and conditions.

For avoidance of any doubt, in accordance with the provisions of Ex-Works (INCOTERMS® 2010) the Customer is responsible for obtaining at his expense any necessary export licence(s) or other approvals, in which respect KEYMILE will offer all reasonable assistance.

5 TITLE AND RISK

Risk in the Products supplied to the Customer shall pass on delivery (Ex-Works, INCOTERMS® 2010).

Title and ownership in Hardware shall pass to the Customer on completion of both the following:

- (a) delivery Ex-Works (INCOTERMS® 2010); and
- (b) receipt by KEYMILE of payment in full for the Hardware in question.

Title in Software licensed to the Customer shall at all times remain with KEYMILE.

6 PAYMENT

6.1 Payment Conditions

Unless otherwise agreed in writing by KEYMILE, all payments shall be made in € (euros) (or such other currency as may be agreed) by direct bank transfer to KEYMILE's bank account, for which full details will be provided.

6.2 Payment Terms

Unless otherwise stated in writing in KEYMILE's quotation, one hundred per cent (100%) of the total amount of the order or every shipment shall be paid to KEYMILE within thirty (30) days of date of KEYMILE's invoice, against presentation of the corresponding KEYMILE commercial invoice(s), and without any deduction, abatement or right of legal or equitable set-off.

6.3 Late Payment

In the event Customer fails to pay on time, KEYMILE shall, in addition to any other rights at law, have the right to withhold any subsequent deliveries to the Customer under this Contract or any other contract held by KEYMILE or another KEYMILE group company with the Customer, or with any of the Customer's subsidiary or affiliate companies.

7 WARRANTY

7.1 Hardware

KEYMILE warrants that upon delivery Hardware shall be free from defects in material and workmanship and shall function in accordance with their Specification(s).

In the event any Hardware is found not to comply with this warranty within a period of 12 (twelve) months from the date of first delivery, then KEYMILE shall at no cost to the Customer (except in respect of certain transport costs detailed below), at KEYMILE's option either repair or replace such defective Hardware. Any Hardware so repaired or replaced shall be warranted for the balance 12 (twelve) months from the date of first delivery, or a period of 3 (three) months from the date of re-delivery, whichever is the longer.

This warranty shall not include consumable items or any routine maintenance materials or servicing, nor shall it apply to any Hardware which has been abused, used in unauthorised applications, improperly stored or improperly installed by the Customer, altered or used in conjunction with third party material which is defective or of poor quality, or which has been operated and maintained by the Customer with a material lack of compliance with KEYMILE's operating and maintenance instructions.

During warranty, the Customer shall be responsible for the freight charges to return the faulty Products to KEYMILE's shipping agents in the country of ultimate delivery. Onward freight costs to KEYMILE's nominated repair facility, and for subsequent return to the Customer after repair, shall be borne by KEYMILE.

In the event any Hardware returned under warranty is found to be "No Fault Found" ("NFF"), the Customer may be charged KEYMILE's prevailing standard NFF fee, together with return freight charges.

In case of Products found "Dead On Arrival", these shall be returned to KEYMILE within two (2) weeks from the date of their arrival at the Customer's premises. In such circumstances, return freight costs shall be fully borne by KEYMILE. KEYMILE will use its reasonable endeavours to send replacement units within two (2) weeks of receipt of notification.

7.2 Software

Where the Customer is granted a right to use license for KEYMILE's Software, a warranty for the medium for the delivered Software of 3 (three) months from the date of KEYMILE's commercial invoice shall apply. KEYMILE does not warrant the Software if it is operated in configurations or with an operating platform that are not recommended by KEYMILE, nor does KEYMILE warrant that the Software is error free. The full terms of the Software warranty are set out in the relevant Software License.

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7.3 Out of Warranty Repairs

Where a Product returned for repair is identified by the Customer as, or is upon inspection by KEYMILE found to be out of warranty, the Customer shall pay KEYMILE's prevailing standard repair charge for that Product.

Freight costs to/from KEYMILE's nominated repair facility for out of warranty repairs shall be borne by the Customer.

In the event of the repair of any Products by KEYMILE outside the terms of the warranty at clause 7.1 above, then KEYMILE shall warrant such repair for a period of 3 (three) months from the date of its re-delivery.

7.4 Limitation of Warranty

The provisions of this warranty constitute the sole liability of KEYMILE in respect of those matters to which it refers. All other terms, conditions and warranties expressed or implied whether in statute or otherwise are hereby expressly excluded, to the maximum extent permitted by law.

7.5 Repair Conditions

Apart from that our current General Repair Terms and Conditions are applicable.

8 SOFTWARE

Any Software shall be licensed to the Customer and must only be used in accordance with the appropriate KEYMILE software licence. The relevant Software license terms are provided with each item of Software; a copy can be made available upon request.

Software together with any associated documentation may not be sub-licensed or transferred to any third party (including Customer's affiliate and group companies) except as may be expressly provided for by KEYMILE's software licence.

Customer make a copy of the Software for back up purposes only; otherwise, Customer may not copy, modify, de-compile, reverse engineer or disassemble the Software.

9 INTELLECTUAL PROPERTY RIGHTS

KEYMILE warrants to the Customer that it owns or is the valid licensee of any intellectual property rights (IPR) with respect to any Products to be supplied, including but not limited to; patents, trade marks, copyright, design rights, or other IPR whether registerable or not.

Customer shall respect and comply with the terms of any copyright or other legend on any manuals or other documentation supplied for use in association with Products, or on whatever media is used to provide such documentation.

10 FORCE MAJEURE

Neither Party shall be liable for any breach of the Contract due to any circumstances outside its reasonable control including but not limited to acts of God, fire, acts of Government, war, military operation or riot, accidents, embargo, industrial actions, terrorist threat, hereinafter referred to as "Force Majeure".

In case of Force Majeure, each party shall without delay notify and furnish the other party in writing with all relevant information thereto. The party affected by the "Force Majeure" shall use all reasonable endeavours to mitigate the effects thereof.

11 CONFIDENTIALITY

Except where a separate confidentiality agreement is in place between the Customer and KEYMILE, the following shall apply:

Both parties agree to treat all information received from the other party as confidential. Neither party shall disclose any information received from the other party to any third party, without the prior written approval of the disclosing party.

The provisions of this clause shall not apply to information which (a) is public knowledge at the time of disclosure; and/or (b) is already in the unrestricted possession of the receiving party, either through its own activities or having received the information legitimately from a third party.

The obligations of confidentiality set out in this clause shall continue for a period of 5 (five) years from the date of receipt of the information, notwithstanding the completion or termination of a Contract.

12 TERMINATION

Either party may terminate a Contract immediately by notice in writing to the other party, if that other party:

- (a) commits any material or persistent breach of any of the provisions of that Contract and such breach is not remedied within 30 (thirty) days after receipt of a written notice giving details of the breach and requiring it to be remedied;
- (b) has an administrator or receiver appointed over any of its property or assets;
- (c) goes into liquidation (except for the purposes of corporate amalgamation or reorganization, and then in such manner that

- the resultant company agrees to be bound by or to assume the obligations under the Contract;
- (d) is subject to a change of ownership or control which is unacceptable to the other party;
 - (e) ceases or threatens to cease carrying on business.

Either party may by written notice terminate a Contract if an event of Force Majeure exceeds 30 (thirty) days.

In the event of termination, Customer shall pay KEYMILE; (a) the price for any Products delivered up until the date of termination, and (b) KEYMILE's fair and reasonable costs, as established where necessary by independent audit, for all other work carried out in accordance with the terms of the Contract, up until the date of termination.

The rights of termination given in this clause shall not prejudice any other right or remedy in respect of the breach concerned or any other breach.

13 LIABILITY

KEYMILE does not seek to limit or exclude its liability to Customer for death or bodily injury caused by KEYMILE's negligence, or in any other circumstances in which would contravene any applicable national or international laws.

Save as expressly provided above, KEYMILE's total liability to Customer in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or contemplated performance of any Contract shall be limited as follows:

- (a) in respect of loss or damage to Customer's tangible property or that of its customers, € 1,000,000 (one million euros) per incident or series of related incidents; and
- (b) in respect of all other liability, the price payable by the Customer under that Contract.

Neither party shall in any event be liable to the other under any Contract for any forms of indirect or consequential loss or damages, including loss of profit, revenue, or business goodwill or reputation, whether or not the possibility of such could have been reasonably foreseen.

14 ASSIGNMENT

Neither party may assign any of its rights and obligations under any Contract to any third party without the prior written agreement of the other, such agreement not to be unreasonably withheld or delayed.

15 WAIVER AND SEVERABILITY

No failure at any time to insist upon or enforce any right or remedy under any Contract shall be deemed a waiver of that party's rights under the Contract, except and to the extent such waiver was granted in writing.

If any provision of these terms and conditions are held to be void or unenforceable, the remaining terms and conditions shall remain in full force and effect, and the parties shall in good faith negotiate a new provision to replace that found void or unenforceable.

16 WEEE DISPOSAL

The Customer shall be responsible for the disposal of Hardware delivered under a Contract in compliance with the provisions of any national legislation enacted in pursuance of EU Directive 2002/96/EC dated 27 January 2003 (as may be amended from time to time) at his own expense. The Customer hereby indemnifies KEYMILE from its obligations (manufacturer liability of redemption) and with it from any related claims of third parties. This exemption is also valid in case of resale or hand over of the item from the Customer to a third party. The obligations of the Customer under this clause in respect of each individual item of Hardware expire two (2) years following the date of receipt by KEYMILE of written notice from the Customer that the Hardware item is no longer in use, provided said item is not used during that time.

17 DISPUTES

Any disputes, controversies or claims arising under a Contract shall wherever possible first be referred to the parties' respective Account Managers. The Account Managers will review the nature of the dispute together within thirty (30) days of the dispute arising and if they cannot reach agreement on the dispute within such thirty (30) day period, the matter shall be referred to the Chief Executive Officer or Managing Director of that part of the relevant party's business which is responsible for performing the obligations of that party under the Contract. If the Chief Executive Officer or Managing Director are themselves unable to resolve the matter within 30 days of the first request so to do then either party shall be free to pursue the matter in accordance with clause 18.

This clause shall not prevent either party from applying to a Court for specific performance or injunctive relief, pending resolution of a dispute.

18 GOVERNING LAW AND JURISDICTION

Contracts shall be governed by and interpreted according to German Law and the parties hereby irrevocably submit to the exclusive jurisdiction of the German Courts.