

Standard Terms and Conditions of keytech Software GmbH

1. General

All deliveries and performances shall be based on these Standard Terms and Conditions. They shall also apply to all future business relations even if they are not expressly agreed. The express written approval of keytech Software GmbH (keytech) shall be required in the case of deviating or supplementary agreements, in particular of contrary business conditions. All orders and contracts and any special undertakings by keytech must be confirmed in writing by keytech. This requirement of the written form may only be waived following written agreements.

2. Offer and conclusion of a contract

Offers are always non-binding. A contract shall not come into being until keytech has issued a written confirmation of order. If we provide a service without the customer receiving a prior confirmation of order, the contract shall come into being at the start of keytech's work or when the goods are delivered.

3. Object of the contract

3.1 The condition and the scope of delivery of the software that is to be supplied and the approved installation environment shall result from the respective program description, supplemented by the user's manual, unless otherwise agreed.

Analysis, planning and consultancy services shall only be the object of the respective contract where this is expressly agreed.

3.2 If the preparation of software is owed, the object of the contract shall result from the specifications. The specifications shall contain the customer's technical and functional requirements, as notified by the customer. The specifications shall contain the binding conditions of the programs that must be supplied. Modifications to the specifications shall result only in accordance with the process that is stipulated in Clause 6, "Modifications to specifications for the preparation of software". If it prepares software, keytech shall only provide analysis, planning and consultancy services where these are agreed in a separate contract.

3.3 In so far as analysis, planning and consultancy services are to be the object of the contract, their commencement, scope, end and the payments to be made for them shall ensue from a written agreement made separately by the parties on a form made available by keytech.

3.4 The software shall be supplied in an executable form (object code) including a user's manual (user documentation or online help) and the installation manual. The transfer of source codes shall require an express agreement..

The user documentation and the installation manual may be made available to the customer electronically as well.

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3.5 The customer shall install and start the software. keytech may also carry out the installation instead of the customer. All support services provided by keytech at the customer's request (in particular preparation for use, installation and the demonstration that the installation was successful, instruction, training and advice) shall be paid for at cost, unless otherwise agreed.

4. Price

4.1 Deliveries and services shall be carried out at the prices and conditions in the written confirmation of order. The prices this contains shall be binding. Unless otherwise agreed in a particular case, prices shall be understood as free to the customer's incoming goods location within the Federal Republic of Germany. Prices are net of VAT at the rate in force on the date of the invoice. Unless otherwise agreed, payments shall be made net without deductions no later than 30 days after the date of the invoice.

4.2 If services are paid at cost, keytech shall document the type and duration of the activities and shall enclose this documentation with the invoice. keytech may invoice services monthly if they are to be paid for at cost.

4.3 In business transactions keytech may invoice interest at 3% above the respective discount rate of the German Central Bank when due, otherwise on default. This shall not affect keytech's right to claim higher damages.

5. Delivery dates and disruptions to the provision of services

5.1 Delivery dates and deadlines shall be binding if both the customer and keytech have designated them in writing as binding in a particular case, otherwise all delivery dates and deadlines shall be non-binding. The period for delivery shall commence when the confirmation of an order is sent, but not before the customer has provided the documents that it is obliged to provide. If non-compliance with a deadline is the result of an unforeseen event outside keytech's control, the deadline shall be extended accordingly. keytech shall only be obliged to supply systems after a written agreement has been concluded between the customer and keytech on the installation conditions at the place of installation.

5.2 If any cause beyond keytech's control, including strikes or lockouts, affects compliance with the deadline, the deadlines shall be deferred by the duration of the disruption, including a suitable start-up period. The customer shall inform keytech without delay of the cause and duration of any deferment resulting on its part.

5.3 If the costs are increased because of a deferment, keytech may demand payment for the extra costs, unless the customer was not responsible for the disruption and its cause was beyond its control.

5.4 If the provider is in default with the performance, for each complete week of the default the customer may demand 0.5% of the price for that part of the services that cannot be put into operation because of the default. Liability for default shall be limited to a total of 5% of this price. The offerer may bring proof that the damage was less than this.

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- 5.5 If the performance is delayed the customer shall only have the right to withdraw from the contract in the framework of the statutory provisions if the offerer caused the delay. If the customer claims damages for the delay instead of performance Clause 5.4 shall apply, subject to the proviso that 1% of the price may be demanded for that part of the delivery that could not be started because of the delay, to a maximum of 10% of this price.
- 6. Modifications to specifications for the preparation of software**
- 6.1 Both parties to the contract may suggest amendments to the specifications (see 3.2). Suggestions for modifications from the customer shall be sent to keytech in writing and described in detail. keytech shall agree to these modifications in so far as this is feasible and reasonable for it without material changes. Unless otherwise agreed, at the request of keytech the modification process shall be documented in writing on a form stipulated by keytech.
- 6.2 keytech shall examine the customer's suggestions for modifications and inform the customer within a reasonable period whether the suggested modification is feasible and reasonable for it. The customer shall examine suggestions for modifications from keytech and notify the latter within a reasonable period whether it rejects a suggested modification in principle.
- 6.3 keytech shall inform the customer whether a detailed examination is necessary for a suggested modification that is probably feasible and reasonable. If a detailed examination is necessary, keytech shall notify the customer within a reasonable period of the planned duration and the payment. The customer shall issue an order for the examination or reject it within a reasonable period. If a detailed examination of the suggested modification is not necessary, keytech shall either submit an offer for the implementation of the modifications, showing the delivery periods, planned dates and the effects on payments, or agree to the implementation of the planned modifications.
- 6.4 The customer shall accept or reject an offer from keytech for the implementation of modifications within the binding period referred to in the offer. Agreed modifications to the specifications shall be documented in writing by means of an appropriate amendment of the contract.
- 6.5 keytech and the customer may agree that services that are affected by a suggested modification may be interrupted until the required amendment of the contractual agreement.
- 6.6 If the required amendment of the contractual agreement is not carried out within the binding period in an offer from keytech for the implementation of modifications, the work shall be continued on the basis of the contract. The periods for performance shall be extended by the number of working days on which work was interrupted in connection with the suggested modification and its examination. keytech may demand adequate compensation for the period of the interruption, unless keytech was able to provide alternative employment for personnel affected by the interruption or maliciously failed to do so.

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7. Utilisation right and protection from unauthorised use

- 7.1 With the payment in full of all money owed the customer shall receive the right to use keytech software, third-party software (i.e. software that was developed by a software provider independent of keytech) and the respective documentation and subsequent supplements to the extent stipulated in the contract. Until all money is paid in full the utilisation right shall always be granted on a provisional basis only and shall be revocable by keytech at will.
- 7.2 If the scope is not agreed in the contract this shall be a non-exclusive utilisation right for permanent use on a computer through another user at the same time.
- An extended use must always be agreed contractually before it commences. Payment shall be based on the scope of the right to use.
- 7.3 The customer shall be entitled to assign its right to use the software to a third party if it waives the use of the software itself.
- 7.4 The customer may only copy the software to the extent that this is necessary for use in accordance with the contract. Copyright notices in or on the software may not be deleted.
- 7.5 Section 69d of the German Copyright Act ("Urheberrechtsgesetz") shall apply in so far as the software contains interfaces to software that is not to be supplied by keytech. The customer shall obtain the required information from keytech before any decompilation.
- 7.6 keytech has protected its software against use in breach of the contract through suitable technical safety measures. These may not materially affect the use of the software on alternative or successor configurations.
- New licenses shall be given a temporary use code (max. 90 days) until the price has been paid in full. keytech shall ensure that the temporary lockout device is cancelled when a customer has paid the price in full.
- 7.7 keytech may revoke the customer's utilisation right if the latter infringes restrictions on use or other provisions that protect against unauthorised use to a more than negligible extent. keytech shall set a period of grace for remedying infringements beforehand. In cases of repeat and in special circumstances that, after balancing the interests of both parties, justify immediate revocation, keytech may revoke without setting a period of grace. The customer shall provide keytech with written confirmation that use was discontinued after the revocation.

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8. Reservation of ownership

keytech reserves the ownership of the reproduced pieces until full payment of all money owed has been made.

9. Obligations of the customer

- 9.1 The customer shall designate a responsible contact person/project manager. This person must be able to take binding decisions for the customer as against keytech, or to cause them to be taken without delay. The contact person/project manager shall be available to keytech to provide the necessary information.. The customer also agrees to ensure that skilled personnel are available for the use of the software no later than the date of delivery.
- 9.2 In so far as the preparation of software is the object of the contract the customer shall provide keytech in good time with all the documents, information and data that are necessary to create the programs.
- 9.3 The customer shall notify keytech without delay of changes to the software's application environment.
- 9.4 The customer shall without delay, usually within 10 working days, examine each delivered program or runnable part program that is supplied as an agreed part delivery to see that it is free from defects and possesses the quality stipulated in the contract (quality inspection). The customer shall use appropriate suitable test cases and data for this purpose. keytech may come to an agreement with the customer with regard to the test procedure and accompany and support the quality test on site.
- 9.5 During or after the quality test the customer shall without delay, but no later than 5 working days after becoming aware of them, duly notify any faults that are found in writing as shown below. The commercial duty to inspect and give notice of defects (section 377 of the German Commercial Code) shall also apply.
- 9.6 The customer shall submit a written notification of any defects in a comprehensible and detail led form and including all the information required for detecting and analysing the defects. In particular, the working steps that led to the occurrence of the defect, its appearance and its effects must be notified. The customer agrees to support keytech as required during the elimination of the defects and in particular at keytech's request to forward a data carrier with the software concerned and to make resources available.
- 9.7 The customer agrees to grant keytech access on working days and during the usual hours of business and at any time online to the equipment and installations that keytech requires to be able to eliminate the defects to the software by means of remote maintenance.

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10. Warranty of quality

- 10.1 keytech guarantees that the software conforms to the agreements pursuant to 3.1 and 3.2 when used for the contractual purpose.

If the software that is handed over has defects that impair its use considerably the customer shall initially only have the right to subsequent performance within a reasonable period. At keytech's option subsequent performance shall consist either of rectification or of a replacement delivery. Adequate consideration shall be taken of the customer's interests when exercising the option.

- 10.2 If the subsequent performance is unsuccessful or if it cannot be carried out for any other reason, pursuant to the statutory provisions the customer may reduce the payment, withdraw from the contract or demand damages or compensation of expenses. Clause 12 in particular shall apply to damages and compensation of expenses.

- 10.3 The customer shall exercise any option to which it is entitled with regard to claims of defects within a suitable period, usually not later than 10 working days.

- 10.4 In the event that the deviation on the part of keytech from the contractually agreed quality or availability is only minor the customer shall not be entitled to any claims because of defects.

Claims for defects shall also not apply in the case of excessive or improper use, natural wear, failure of components in the system environment or faults that occur as a result of particular external influences that are not foreseen under the contract. This shall also apply in the event of subsequent modification or repairs by the customer or a third party and of defects that result from the use of third-party software that was not agreed with keytech, except where this does not make the analysis and elimination of the defect more difficult.

The customer shall also only be entitled to claims for defects if notified defects are reproducible or are otherwise verified by the customer. Clause 9.4. shall apply to the notification of defects.

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10.5 Clause 12 shall apply to claims for damages or for compensation of expenses.

10.6 Claims for defects shall become statute-barred within one year of the commencement of the statutes of limitation. This shall not affect the statutory periods for claims under rights of recourse pursuant to section 478 of the German Civil Code, and this shall also apply in so far as longer periods are prescribed by law pursuant to section 438 (1) no. 2 of the German Civil Code (building works and goods for building works) in the event of an intentional or grossly negligent breach of duty on the part of keytech, of the malicious concealment of a fault or in cases of fatal injuries, bodily harm or damage to health.

The statute of limitations for claims for defects shall commence with the deliver or, if keytech installs, with the conclusion of the installation. An extension of the scope of the application in accordance with Clause 7.2, second sentence, shall not affect the course of the statutory limitation.

10.7 keytech may demand payment for the expenses incurred if

it is active as the result of a notification without there being a defect, except where the customer was unable to detect at reasonable expense that there was no defect, or
a notified fault cannot be reproduced or otherwise verified as a defect, or
additional expense occurs because of performance of the customer's obligation not in accordance with the contract (see in particular Clause 9).

11. Warranty of title

11.1 keytech shall only be liable for infringements of third party rights through its service where the service is used in accordance with the contract and in particular in the application environment provided for in the contract.

keytech shall only be liable for infringement of third party rights within the European Union and the European Economic Area and at the location of the use in accordance with the contract. Clause 10.3 sentence 1 shall apply analogously.

11.2 If a third party claims to the customer that a service from keytech infringes its rights the customer shall notify keytech of this without delay. The offerer or where applicable the vendor's supplier shall be entitled but not obliged to defend against the submitted claims at their own expense where this is legally permitted.

If a service infringes the rights of a third party keytech shall at its own option and at its own expense

acquire the right to use the service for the customer, or
design the service so that it does not infringe any rights, or
take back the service at the invoice cost (less suitable payment for use) if keytech is unable to achieve any other remedy at reasonable expense.
Adequate consideration shall be taken of the customer's interests.

11.3 Claims by the customer under warranty of title shall become statute-barred in accordance with Clause 10.5. Clause 12 shall apply analogously to claims for damages and for compensation for expenses.

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12. Liability

- 12.1 keytech shall be liable for damage that occurs with whatever legal basis only if it or its legal representatives or vicarious agents acted intentionally or with gross negligence.

This exclusion of liability shall not apply in cases of damages for fatal injuries, bodily harm or damage to health for which keytech or its legal representatives or vicarious agents are responsible or if the claims are based on the Product Liability Act.

- 12.2 keytech shall only be liable in the event of ordinary negligence if it breaches a material contractual obligation (fundamental obligation). In the event of damage to property and assets this liability shall be limited to the typical and foreseeable damage and this shall also apply to lost profits and the non-occurrence of savings. Liability for other more remote consequential damages is excluded. In a particular case liability shall be limited to the market value, in the case of regular payments to the amount of payment per contract year, but not less than €50,000.-. Clause 10.5 shall apply analogously to statutory limitations. The parties may agree further liability against payment on the conclusion of the contract.
- 12.3 keytech shall only be liable under a declaration of guarantee for damages if this was explicitly taken over in the guarantee. In the event of ordinary negligence this liability shall be subject to the restrictions of Clause 12.2.
- 12.4 In the event of data losses keytech shall only be liable for the expense that is required for the restoration of the data with correct data saving on the part of the customer. In the case of ordinary negligence on the part of keytech it shall only be liable if the customer saved the data correctly immediately before the measure that led to the loss of data.
- 12.5 Clauses 12.1 to 12.4 shall apply analogously in the case of claims for compensation for expenses and other claims under liability by the customer against keytech.

13. Setting off and rights of retention

The customer may only assign rights and obligations arising under the contract with the written consent of keytech. The customer may only set off or claim a right of retention in the case of claims by keytech if its counterclaim is not in dispute or has been established in a non-appealable judgement. In the case of defects the customer may only retain payment to an extent commensurate with the defect and only if there is no doubt as to the existence of the defect. Clause 10.3, first sentence shall apply analogously.

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14. **Obligation to secrecy**

- 14.1 The parties to the contract are obliged without any time limit to secrecy with regard to business and operational secrets and to information designated as confidential that becomes known in the context of fulfilment of the contract. This information may not be passed to non-participating third parties without the written approval of the other party to the contract.
- 14.2 The parties to the contract shall also impose these obligations on their employees and on any third parties who are employed in a particular case. In addition, they shall take suitable technical precautions in the framework of what is technically appropriate in order to prevent access by unauthorised third parties to the data of the other party to the contract.

15. **Miscellaneous**

- 15.1 The laws of the Federal Republic of Germany shall apply. Application of the UN Sales Convention is excluded.
- 15.2 These Standard Terms and Conditions of Delivery and Payment shall remain valid even if individual provisions are invalid. keytech shall be entitled to replace the invalid provision with one that most closely approached the financial purpose of the invalid provision.
- 15.3 The place of performance is Recklinghausen.
- 15.4 The venue for legal proceedings involving a merchant, a legal entity under public law or a Federal Special Fund shall be the location of keytech's registered office. keytech shall also be entitled to initiate proceedings at the court for the customer's place of abode or registered office.
- 15.5 The relevant version of *Standard Terms and Conditions of keytech Software GmbH* replaces the old one completely.