

keyon

# General Terms and Conditions of Sale and Payment

GTC



January 2015

## 1 Scope

These general terms and conditions (GTC) are unless otherwise expressly agreed, an integral part of all contracts between Keyon AG, hereinafter called Keyon, and the customer. They apply to all legal transactions, services or products rendered or supplied by Keyon in Switzerland or abroad. Any derogation from the present terms and conditions is permissible only in so far as it is expressly agreed in writing by Keyon.

The contractual order of precedence is as follows: (I.) individual contracts, (II.) general agreements, (III.) these general terms and conditions, (IV.) legal regulations.

## 2 Definitions

**Keyon:** Refers to the company Keyon AG, Schlüsselstrasse 6, 8645 Jona, Switzerland as well as to their employees.

**Customer:** Refers to clients or users of services or products provided by Keyon.

**Services:** Refers to services provided including documentation of any kind in writing or electronic form, as well as custom software components, which are adduced or created by Keyon under a service contract or contract for work.

**Products:** Refers to software or hardware components, including documentation in written or electronic form, provided by Keyon under a license or hardware procurement order. The integration and commissioning of products takes place within the scope of a service.

**In writing:** Refers to an explicit expression of will in the form of an electronic document (e.g. e-mail), letter mail or fax.

## 3 Offer

The offer includes features, fees, deadlines as well as further terms of the service or product and is unless otherwise expressly agreed, valid for 30 days.

It is the intellectual property of Keyon and must not be disclosed to third parties without written permission by Keyon.

## 4 Placing of order

A contract comes into effect through a written order by the customer, which is confirmed in writing by Keyon. Terms that differ from the placing of order to the offer are only binding for Keyon if the deviations have been confirmed in writing by Keyon.

The contract determines the scope and execution of the services or the delivery of goods. Any changes require the agreement of both parties in writing. Keyon is under no obligation to make changes to services or products that are under construction or have already been completed or delivered.

## 5 Delivery dates and deadlines

Delivery dates and deadlines are unless otherwise expressly agreed, planning data without due dates or fixed nature. They are respected by Keyon wherever possible.

## 6 Prices and terms of payment

Keyon provides services or supplies products to the agreed terms as per the placing of order. All prices are quoted in the particular currency without VAT or other taxes, statutory charges, customs duties, transport insurance or packaging. The due date is 30 calendar days unless otherwise expressly agreed.

Keyon is entitled to charge a reasonable default interest in addition to the normal invoice if the customer is in default of payment of more than 60 calendar days.

## 7 Reservation of title

Results from services and products of Keyon remain until full payment the property of Keyon. Keyon is entitled to rescind the contract and to claim compensation for damages if the customer is in default of payment.

## 8 Duties of Keyon

Keyon is obligated to a careful execution of the services in a good quality by the use of its own, qualified staff. The customer is informed in advance in writing if Keyon is engaging freelancers or employees of a third party.

Keyon informs the customer periodically about the status of the project and displays any planning deviations or risks.

## 9 Duties of the customer

The customer commits to creating the prerequisites at an early stage to allow for the proper service provision by Keyon. This includes, in particular, the free and appropriate provision of infrastructure and qualified staff.

The customer commits, in addition, to inform Keyon at an early stage and in a comprehensive form about any activities that require a service provision by Keyon.

## 10 Warranty for services

Unless otherwise expressly agreed, completed services or delivered goods are after 14 calendar days considered as accepted by the customer. Keyon must be notified in writing within that period regarding any defects. Productive use is deemed acceptance.

Warranty or limitation periods experience no interruption in case of a recognition or removal of a defect by Keyon.

Excluded from the warranty are defects that Keyon is not responsible for. These are in particular force majeure, improper and inappropriate handling by the customer or by third parties.

## 11 Warranty for products

The warranty for products and the terms for maintenance and support comply with the terms and conditions of the respective manufacturer.

In case of delayed installations by more than 60 calendar days, for reasons that the customer is

accountable, the provided products are considered as accepted by the customer.

Furthermore, the provisions of paragraph 10 shall apply.

## 12 Liability

The liability of Keyon for direct damages incurred by the customer resulting from or in connection with the fulfillment of this agreement, irrespective of its legal basis (such as default, non or incorrect performance, breach of duty, warranty), by Keyon or its agents shall be limited to a one-time liability of maximum 100% of the remuneration invoiced for services provided up to that date.

This limitation shall not apply to any liability for culpably caused damage to property or personal injuries/bodily harm as well as for the implications of infringement of intellectual property rights in the context of software components, where Keyon holds the sole ownership rights.

## 13 Disclaimer

Any liability or responsibility of Keyon or its agents arising from or in connection with the incorrect or delayed cooperation of the customer, for data loss and for any indirect or consequential damages, such as loss of profit, non-realized savings, additional efforts and expenses of the customer or third party claims, shall be excluded.

Keyon declines any liability related to reasons beyond its accountability.

## 14 Information leaflets

All information provided by Keyon, on paper or in electronic form, concerning services or products of Keyon or third parties are used for guidance and are not binding. Such information shall remain subject to changes.

## 15 Use and intellectual property rights

With the delivery and full payment of services or products, the customer acquires the respective usage rights.

All rights remain, with exception of the stipulated usage rights, in particular intellectual property rights, patent and copyrights, including exploitation and modification rights, with Keyon, its licensors or third party manufacturers. Any source code remains exclusively with Keyon unless otherwise expressly agreed.

#### 16 Non-Solicitation agreement

During the term of this agreement and for the period of one year after any termination of this agreement, the parties will not solicit or attempt to solicit any appointed employees.

#### 17 Data protection

The parties commit to comply with the relevant regulations of data protection.

#### 18 Confidentiality

The parties commit to treating the information provided by the other party as confidential and handle it accordingly to the own corporate business secrets. Such information must not be made available to third parties.

This obligation to confidentiality remains valid two years after any termination of this agreement.

The obligation to confidentiality shall expires if (I.) the information provider waived secrecy, (II.) the information recipient can prove that he had the information prior to the disclosure of the information provider, (III.) the information is publicly available, or (IV.) legal regulations obligate a party to disclose information. In the latter case, the information provider notifies the other party.

#### 19 Final provisions

Keyon reserves the right to change these terms and conditions, including any annex, at any time.

If individual provisions of this agreement, including its appendices, prove to be void or ineffective, the validity of the remaining parts of the agreement shall not be affected.

In such a case, the parties shall amend the agreement in such way that the purpose of the void or ineffective part is achieved as best as possible.

#### 20 Jurisdiction

This agreement is governed by Swiss laws to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

If the parties fail to resolve differences, the competent court at the domicile of Keyon shall have exclusive jurisdiction over any disputes arising from or in connection with this agreement.

#### 21 Legally binding version

The original version of the general terms and conditions has been composed in German. Legally binding is only the German version.