

TERMS AND CONDITIONS OF SALE KEYTEC

To all our quotations, orders and agreements the following Terms and Conditions and no other terms and conditions apply at all times, and no other terms and conditions (whether contained in your purchase order or otherwise) shall be binding on us unless they are expressly agreed to in writing between you (the "Purchaser") and us.

1. Validity

Our quotation is open for acceptance within the period stated therein. When no period is stated, then orders arising from our quotation shall be subject to our confirmation in writing (including fax, electronic mail or cable). By accepting our quotation or by ordering our products the Purchaser agrees to these Terms and Conditions

2. Documents

Except where intended to serve as instructions for use or advertising matter, all technical information in relation to our products, and their maintenance remains our property and may not be utilized or copied, reproduced, transmitted or communicated to third parties without our prior written consent. Illustrations, catalogues, colours, drawings, dimensions, statements of weight and measurements etc. made available by us as printed information are only meant to present a general idea of the goods to which they refer; they are approximate only and therefore not binding upon us.

3. Trade terms

Unless otherwise agreed the latest edition of the Incoterms issued by the International chamber of Commerce shall apply to the trade terms. Unless otherwise stated in our quotation the term of delivery will be EXW.

If other Incoterms are agreed upon and (partial) insurance will be provided by us, insurance will be against all risks of the carriage involved in the contract on the conditions of the Institute Cargo Clauses (All Risks) provided always that insurance against war risks and strike risks will be arranged in conformity with the Institute War Clauses and the Institute Strikes Riots and Civil Commotions Clauses to the extent such insurance is reasonably procurable at the time of shipment according to the Institute of London Underwriters.

Under any terms holding us responsible for the costs of transportation and/or insurance, any additional costs of rerouting and/or surcharges which are the result of circumstances or events, that are beyond our reasonable control such as, but not limited to, those enumerated under "force majeure" in paragraph 5 hereof, shall be for Purchaser's account.

In case the goods cannot be despatched to their destination at the date scheduled therefore by reasons attributable to the Purchaser and/or outside our reasonable control, we shall be entitled to store the goods concerned at the Purchaser's expense and risk, in which case the warehouse receipts shall serve as substitutes for the shipping documents in all respects and the Purchaser under-taking to reimburse within fourteen days of our first demand any and all additional expenses so incurred.

4. Despatch

Full forwarding instructions must be sent with the order. The times given for (readiness for the) despatch have to be reckoned - all in accordance with the other provisions specified in our quotation - from the date of the bank's advise that the Letter of Credit and/or other payment instrument asked for has been established in conformity with our requirements and the advance payment - if required - has been received, whichever of said dates is the later. We reserve the right to despatch the goods in consignment as and when they are ready for despatch. Any delay in the fulfilment of the above-mentioned conditions will entitle us to being compensated for the additional costs resulting from the suspension of the execution of the order/contract and where such delay would exceed a period of three months to cancel the order/contract without being held liable to any further liability towards the Purchaser.

5. Force majeure

In the event of the occurrence of force majeure, we shall be entitled to suspend delivery of the goods and/or provision of services for the duration of the prevention or delay caused by such force majeure, without being held responsible for any damage resulting therefrom to the Purchaser or a third party. In that case the times given for despatch shall be extended for the period of prevention or delay caused by such force majeure. A failure in the performance of the order/contract cannot be imputed to us if it does not result from our fault, and if we cannot be held accountable for it by law, by force majeure or common opinion. In case of such a non-attributable failure of performance the relevant part of the order will be suspended. We will inform Purchaser regarding the occurrence of such failure as soon as possible.

In the event the suspension has lasted for five consecutive months or as soon as it is established that the suspension will last at least five consecutive months, either party is entitled to terminate partially or in whole the order/contract without being held liable to any indemnity whatsoever towards the other party. The expression "force majeure" shall for the purpose of the order mean and include circumstances or occurrences beyond one party's reasonable control - whether or not foreseeable at the time of the order - in consequence of which one party cannot reasonably be required to execute its obligations under the order. Such circumstances or occurrences include but are not restricted to: acts of God, war, civil war, insurrection, fires, floods, labour disputes, epidemics, defaults of suppliers or sub-contractors, governmental regulations and/or similar acts, freight embargoes, non-availability of any permits, licenses and/or authorizations required.

6. Retention of Title

The Purchaser explicitly accepts that we shall retain ownership of the goods until full payment has been received of all amounts due in accordance with the contract and the Purchaser shall not resell the goods than in the normal course of business and take all measures to protect the goods and to ensure that our title to the goods is in no way prejudiced. The Purchaser shall be obliged to insure the goods at its own expense for the time they remain our property. If the Purchaser fails to make any payments to us when due, the customer shall, upon our first notice, be obliged to return to us, at Purchaser's risk and expense, any goods that are subject to the retention of ownership.

7. Complaints and Returns

Any complaints of erroneous despatch and/or apparent damage shall be made in writing within fourteen days after receipt of the goods by the Purchaser giving the reason for the request to return the goods and the date and number of our in-voice. If return of the goods is agreed upon by us in writing by means of a return authorization notice, the goods shall be forwarded in accordance with our instructions; all goods returned must be consigned insurance and carriage prepaid by Purchaser and packed in their original packing.

8. Prices

Unless otherwise stated prices are in euro. Prices are based on the agreed upon delivery date(s). We reserve the right to adjust the prices in the event of changes of delivery date(s) or changes in other circumstances upon which our agreement is based and which fall beyond our control. Furthermore the prices may be altered before or after acceptance of our quotation as a result of (material) changes in the prices for raw materials or third party components to be used in the manufacture of the goods. We shall notify the Purchaser on the occurrence of such price alterations and, in case of a notification of a price increase the Purchaser shall be entitled to cancel the pertaining (part of the) order/contract in writing provided such cancellation has been received by us timely in advance of the despatch of the goods or within seven days as from the date of our price increase notification, whichever is the soonest. Unless expressly agreed otherwise, the costs of installation of the goods are not included in our quotation.

9. Payment

Unless otherwise stated in our quotation invoices are payable 30 days after date of invoice.

Payment will constitute a valid discharge only in so far as an account payable by a first class bank in the Netherlands on demand edited in our favour, irrevocably and free of charge, in the currency quoted, in freely convertible and transferable funds, at its exact due date. Any delay in payments will incur legal interest with a minimum of 1% per month or part of a month immediately as from the due date. Any partial non-fulfilment of our obligations solely attributable to us entitles the Purchaser to withhold payment only to a corresponding, reasonable amount. However, the taking into operational use of the goods supplied entitles us to full and immediate payment, failure of which allows us to disable use of goods supplied.

10. Letters of Credit, Bills of Exchange

Any letters of credit established in our favour shall be issued by first class banks which have adopted the Uniform Customs and Practice for Documentary Credits issued by the International Chamber of Commerce, applicable at the date the contract comes into force.

11. Tests

Our goods are carefully inspected and, where practicable, submitted to standard tests at the factories before despatch. If special tests or tests in the presence of the Purchaser or his representative are required, these must be specified by the Purchaser when giving

the order and shall, unless otherwise agreed, be made before despatch; all costs connected with such tests will be charged extra. In the event of any delay on the part of the Purchaser in attending such tests after fourteen days' notice that the goods are ready to be tested, the tests will proceed in the Purchaser's absence and shall be deemed to have been made in his presence.

12. Installation

Unless expressly agreed otherwise, the installation of the goods supplied by us is not included in our quotation.

13. Operational requirements for the processing of goods made available to us.

1. In tendering for and accepting orders we assume that:
 - a. the goods to be processed meet any conditions stipulated by us in the tender or order confirmation and furthermore have been constructed in accordance with requirements which may reasonably be stipulated with a view to the processing operation demanded;
 - b. the materials offered for processing are of the same type and/or quality as the materials on the basis of which we proceeded when tendering for or accepting the order;
 - c. the work can be performed in the most economical manner and without interruptions;
 - d. special measures to protect the environment and to protect against environmental and atmospheric influences are not necessary.
2. If it becomes apparent to us when the goods are offered and/or the order is carried out that the requirements stated in subsection 1 above have not been met, we shall be entitled to refuse the order or, for the account of the Purchaser, to make the goods suitable or cause them to be made suitable for the required processing, and in doing so to extend the agreed delivery period by the time required for such work.
3. If parts made available by the Purchaser have to be incorporated in goods to be manufactured by us, such parts shall be supplied by the Purchaser in good time and in the required numbers. The parts which are not used shall be made available to the Purchaser in the same manner together with the manufactured goods.

14. Ownership and use of tenders, tools and documentation

1. All tenders, drawings, schedules, designs, lists of materials and other documentation provided by us either on paper, in electronic files or any other form shall remain our property. Without our permission they may not be copied, either in full or in part, other than for internal use and they may not be shown to any third parties or made available other than for the purpose for which they were provided by us. All illustrations, drawings, data concerning weights, dimensions, colours, etc. included in catalogues, price lists and circulars are to be regarded only as approximations.

2. Drawings, CAD-files, tools and moulds shall remain our property, unless otherwise stated, even if they have been manufactured by us, or by third parties hired by us, on the instructions of the Purchaser, and if the Purchaser has contributed to their costs. Without prior written permission from the Purchaser, we shall not use on behalf of third parties drawings, tools and moulds, which we have manufactured on the instructions of the Purchaser.
3. CAM-files and related data shall remain our property.
4. The Purchaser shall be liable towards us for any damages resulting from the fact that third parties have access to the drawings etc. The drawings etc. shall be returned to us immediately at our first request.
5. Where an order is to be executed on the basis of designs, drawings or other instructions given by or on behalf of the Purchaser, the Purchaser guarantees that no industrial or other rights of third parties are thereby infringed.

15. Personnel

If during the contract period or six months thereafter the Purchaser hires a person that has been employed by us in the period of six months before hiring that person the Purchaser shall pay us an amount of euro 50,000.

16. Warranty

1. We guarantee, with due observance of the provisions of article 13 and of the restrictions stipulated below, that the work performed by us shall be in conformity with the work offered by us and that the goods shall at the time of delivery and for the period of six (6) months thereafter be free from defects in material or workmanship and shall conform to its specifications or such other specifications as we have agreed to in writing, it being understood that such warranty does not cover damage
 - a. sustained by normal wear and tear;
 - b. arising in consequence of negligence, misuse or improper installation, repair, alteration, or return handling of the goods by a party other than us;
 - c. environmental or stress testing; or
 - d. improper storage of the goods prior to installation, use or resale to ultimate customers.
2. Under this guarantee we shall replace such parts as have proved to have such defects as set out hereabove or, at our option, repair such parts or have them repaired at our order, always free of charge, provided that we are informed by the Purchaser in writing (including fax, electronic mail or cable) within fourteen (14) days after the defects have revealed themselves and the defective goods have been returned carriage paid to an address or location indicated by us; such defective parts shall become our property as soon as they have been replaced. Purchaser must pay for the products not accepted by us for warranty adjustment as well as freight and handling costs associated therewith.
3. If the Purchaser places raw materials or goods at our disposal for processing, guarantee will only be given for the soundness of execution of the work concerned. If it is demonstrated by the Purchaser with due observance of what is stated below in this article, that we have not performed the required work in conformity with the quality requirements offered by us, we shall process the goods

once more without charging for the costs. We shall in no circumstances be bound by any further obligation, such as liability for damages, or dissolution of this agreement.

4. The goods must not have undergone any other processing, mounting or building-in in the meantime.
5. If in the processing of the goods made available, we use precious metals, by applying such metals to the goods to be processed, and the goods have become unusable due to incorrect processing as described in subsection 2, and we consequently still have to carry out the order, the contract price shall be increased by the additional value of the precious metal to be applied by us.

17.Liability

1. Compliance with our guarantee pursuant to article 16 above or with any agreed modification thereof shall be considered to give full satisfaction to the Purchaser. Any claim of the Purchaser for offset, compensation (except in cases indicated below) or for dissolution of the contract or for damages other than resulting from our liability provisioned herein below, is hereby waived. We shall only be liable for personal injury and direct material damages to the goods supplied, and we will indemnify Purchaser, up to a maximum of euro 500,000 (five hundred thousand euro) per event, to the extent such injury or damages are the direct result of negligence of us or of persons authorized to provide services on our behalf, as well as to the extent such injury or damages are the direct result of proven defects in design of or faulty workmanship in goods manufactured by us. We shall not be liable for damages or losses other than those for which we have expressly assumed liability and our liability shall in no event include any consequential, economic or other special or indirect or punitive damages nor for any loss of whatsoever nature and howsoever arising, including patent liabilities or patent indemnification. The Purchaser shall hold us harmless for any and all such claims of third parties.
2. The goods of the Purchaser or of third parties which are present on our premises are not insured against any risk whatsoever. We cannot be held liable in any case whatsoever for damage, destruction or loss of goods belonging to third parties or to the Purchaser. If goods of third parties and/or the Purchaser have become unusable as a result of processing performed by us, this shall be entirely at the risk of the Purchaser. We accept liability for damage to or the becoming unusable of goods, which is the direct result of gross culpability or negligence up to a maximum of the value of the processing which has been or would have been performed by us on the goods in question.
3. Where we provide advice we shall be liable for any damage that is the direct consequence of any deficiency in that advice, if and in so far as the deficiency ought to have been avoided in the given circumstances if normal professional skill and care had been used, up to an amount not exceeding the separate remuneration stipulated for that advice. We shall not be liable in other cases and for other damage resulting from such advice.
4. We are not liable for defects arising out of materials provided by, or a design stipulated or specified by the Purchaser.

18.Taxes

All taxes, duties, levies and similar expenses, which are or become due in connection with our offer, any order or contract resulting therefrom and the carrying out thereof are for our account, as far as they are due in the supplier's country, and for the account of the Purchaser as far as they are due in the Purchaser's country or in such other country or countries for which the goods are destined or in which any services will be performed, irrespective of which party (including its representatives/employees) will be liable to pay such taxes.

19.Export Control

Purchaser acknowledges that the goods and/or documentation supplied may be subject to COCOM, United States or any specific local export regulations and Purchaser acknowledges that it is familiar or agrees to become familiar with such regulations. Purchaser furthermore agrees that it will not deal with the goods and/or documentation in violation of such regulations.

20.Bankruptcy

In the event of bankruptcy of the Purchaser all the property of the Purchaser in our possession shall become our property if there are any amounts outstanding at the moment of bankruptcy. The property shall be sold to the Purchaser or the entity continuing the business of the Purchaser for an amount equal to the amounts outstanding at the moment of bankruptcy.

21.Arbitration and Law

Any dispute, controversy or claim arising out of or in connection with our quotation(s), any order or agreement(s), or the breach, termination or invalidity thereof shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by three arbitrators to be appointed in accordance with said Rules unless parties agree that one arbitrator will be appropriate. Such arbitration to be held at Rotterdam, the Netherlands and the decisions of the arbitrator(s) will be taken by applying the substantive law of the Netherlands applicable to our quotation(s), order(s) or agreement(s), with the exclusion of the United Nations Convention on Contracts for the International Sale of Goods. The arbitral procedure shall be conducted in the English language.

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