

General Terms and Conditions

Article 1: General

These general terms and conditions are applicable to all (legal) acts of Keyprocessor B.V. (hereinafter referred to as "Keyprocessor") such as quotations and agreements with regard to all activities and deliveries of related materials to be carried out by Keyprocessor. Deviations from these terms and conditions are only valid insofar as they have been expressly accepted in writing by Keyprocessor.

Article 2: Applicability

If, on acceptance of the quotation made by Keyprocessor, the buyer/customer explicitly contests applicability of these general terms and conditions and refers to its own general terms and conditions, then Keyprocessor's quotation is deemed not to have been accepted.

If, on acceptance of the quotation made by Keyprocessor, the buyer/customer does not explicitly contest applicability of these general terms and conditions, then possible terms and conditions, sales conditions or purchase conditions of the buyer/customer can never be applicable.

At all times it applies that the buyer's/customer's conditions of supply, sale or purchase can only be binding for Keyprocessor, if Keyprocessor has expressly accepted same in writing.

Article 3: Offers

Para. 1 Quotations made by Keyprocessor are without obligation and may be revoked by Keyprocessor at any time unless the quotation contains a term of acceptance and this term has not yet expired.

Para. 2 Data specified in catalogues, illustrations, drawings, standardization sheets or elsewhere are not binding, except insofar as the relevant data is explicitly included in a contract signed by the parties or an order confirmation signed by Keyprocessor, without prejudice to the own responsibility of the buyer/customer for data provided by it.

Any minor differences in dimensions or preferred modifications of a subordinate nature in the structure or parts for the benefit of a correct implementation, remain reserved.

Keyprocessor also reserves the possibility that there could be a colour difference in the product supplied or to be supplied.

Para. 3 Keyprocessor's quotations are based on the implementation of activities and deliveries of the required materials under normal circumstances and during Keyprocessor's normal business hours. In the event of a delivery or installation outside of normal business hours, a surcharge is calculated on the normal hourly rate, if applicable.

Para. 4 Keyprocessor is not obliged to redeliver products that have been delivered before, if these products have been taken out of production in the meanwhile, or have been discontinued for any other reason from Keyprocessor's sales program.

Article 4: Acceptance

Acceptance of the Keyprocessor quotation by the buyer/customer, must be made in writing to Keyprocessor. For Keyprocessor, the agreement is only binding if Keyprocessor confirms the agreement in writing to the buyer/customer within 14 days after receipt of the written unconditional job confirmation from the buyer/customer. Application of Section 224 of Book 6 of the Dutch Civil Code is excluded.

Article 5: Authority

The authority to conclude binding agreements on behalf of Keyprocessor is reserved exclusively for Keyprocessor's board of directors. Representatives, agents or other persons who do not belong to Keyprocessor's board of directors, do not have the authority to conclude binding agreements for Keyprocessor, unless same is confirmed in writing by the board of directors to the buyer/customer. The provisions of Section 61 (2) and (3) of Book 3 of the Dutch Civil Code is explicitly not applicable.

Article 6: Duty of confidentiality

At all times, the buyer/customer will ensure that no data relating to Keyprocessor's methods of manufacture or construction are shown to third parties, published or used in any manner whatsoever and in the broadest sense of the word.

Article 7: Copyright

Software, source codes, sources, computer software, drawings, calculations, descriptions, models, tools and suchlike produced or provided in the context of the quotation or agreement concluded by Keyprocessor, remain the property of Keyprocessor, even though Keyprocessor has invoiced the costs thereof to the buyer/customer.

Insofar as the Copyright Act of 1912 is applicable to the goods as referred to above, Keyprocessor is the copyright holder with all its ensuing legal consequences. The buyer/customer vouches that this data or these goods produced or issued on instruction by Keyprocessor, is not copied, shown to third parties, published or used in any manner whatsoever and in the broadest sense of the word, except with Keyprocessor's explicit written consent.

If the buyer/customer fails to fulfil this obligation, or there is an attributable shortcoming on its part to fulfilment of the commitment, the buyer/customer is obliged to compensate Keyprocessor for the resulting damages.

Article 8: Price and costs

Prices quoted or invoiced by Keyprocessor apply for carriage paid deliveries. The prices as referred to in this article exclude turnover tax and costs are borne by the buyer/customer as a result of the agreement between the parties. If, in the implementation of the activities, Keyprocessor must wait as a result of activities to be carried out by the customer or third parties, Keyprocessor is entitled to charge the buyer/customer for any related costs.

Article 9: Transportation and shipping costs

Para. 1 For every order, Keyprocessor charges actual shipping costs or a fixed surcharge for shipping costs to the buyer/customer.

Para. 2 If required by the buyer/customer, Keyprocessor will take care of transportation to the internal place of destination without costs being brought into account, provided the supplied products can be transported to the internal place of destination that is equipped with a goods lift large enough for platform trailers and pallet trucks and without causing disruption, so that if this is not complied with, Keyprocessor is discharged of this obligation or has the right to charge the buyer/customer for additional costs based on the number of working hours spent.

Para. 3 If, at the request of the buyer/customer, delivery is postponed or accelerated, Keyprocessor has the right to compensation for costs arising from this postponement or acceleration and of the statutory interest on the price of the relevant products or the contract price of the activities to be carried out.

Para. 4 If the supply at or near the place of delivery requires additional working hours due to the absence of paving or a paved roadway, or through any other circumstances whatsoever, Keyprocessor is entitled to charge these additional hours separately. The starting point for the hourly rate is then Keyprocessor's full employer charges per hour of the relevant employee or employees.

Para. 5 Any installation costs, assembly costs, packaging and other costs incurred in connection with the assignment are not included in the price, unless this is expressly stated in writing by Keyprocessor.

Para. 6 Keyprocessor is entitled to increase the net invoice amount excluding turnover tax by separately itemising a prompt payment discount of 2% on the invoice. If payment is made on or before the due date, the buyer/customer may deduct the particular amount from the invoice.

Article 10: Change in price

In the event that, after conclusion of the agreement between Keyprocessor and the buyer/customer, there is a change in the amount of turnover tax, wages, other taxes, import duties, levies, premiums for employee insurance schemes, contributions for national social insurances or other charges imposed by the government or the coming about of a new collective labour agreement, even though same are as a result of circumstances already foreseeable on quotation, Keyprocessor is entitled to change the agreed price, with due observance of any existing legal requirements, if and insofar as these changes have an impact or, as the case may be, could be of influence on the implementation of this agreement. Keyprocessor is likewise entitled, in the event of an exchange rate fluctuation of foreign currency, if and insofar as Keyprocessor has purchased or will purchase materials abroad for implementation of the activities, or the agreed price was established in foreign currency.

If Keyprocessor makes use of the entitlements referred to above and wishes to increase the agreed price within three months after conclusion of the agreement, the buyer/customer is entitled to terminate the agreement with due observance of the existing legal provisions for this purpose.

Article 11: Buyer/customer obligations

The buyer/customer is obliged to ensure that the activities that are not part of the activities assigned to Keyprocessor are implemented in such good time to the requirements of the project that implementation of the activities is not delayed.

The buyer/customer must ensure that sufficient storage space, working space and canteen space as well as the necessary electricity and water are freely available on site and that all laws and necessary safety precautions and other precautionary measures are taken in consultation with Keyprocessor and will be fully maintained during implementation of the activities.

For the vertical transportation of materials and tools, Keyprocessor may make free use of the winches and construction hoists with controls that are present on site.

If the buyer/customer is uncertain about which precautions are legally required, or necessary for other reasons with regard to implementation of this provision, the buyer/customer is obliged to contact the Labour Inspectorate and must furthermore follow up the instructions and recommendations made by the Labour Inspectorate.

All additional costs resulting from the non-compliance, late or improper fulfilment of abovementioned obligations must be borne by the buyer/customer.

The buyer/customer indemnifies Keyprocessor against all claims from employees of the buyer/customer or Keyprocessor or third parties arising from the non-compliance, late or improper observance by the buyer/customer of the precautionary measures and necessary precautions referred to in this article, which are understood to include legally prescribed safety measures.

Article 12: Periods

The delivery time, as well as the time in which implementation of the activities must be carried out, are estimates established by Keyprocessor and not binding.

There can only be a deadline if an exact date has been set for which implementation of the activities must be carried out by Keyprocessor, which must be apparent from the written statement in that connection, drawn up and signed by both the buyer/customer and Keyprocessor.

The period within which implementation of the activities should be carried out or the goods should be delivered commences as soon as the agreement has been concluded, all information required for the implementation of activities is in Keyprocessor's possession, all the necessary permits, exemptions, approvals and/or assignments have been obtained, the place where the activities are to be carried out is prepared in such a manner that the activities can be commenced and the buyer/customer has fulfilled all its obligations up to that point in time.

If Keyprocessor exceeds the estimated delivery time or time of commencement of the activities, this does not entitle the buyer/customer to claim compensation for damages unless the contrary is expressly apparent in the law.

If Keyprocessor exceeds the estimated delivery time or time of commencement of the activities, this does not entitle the buyer/customer to failure of fulfilment of its obligations towards Keyprocessor in a prompt or proper manner, nor for undertaking activities or having activities undertaken with or without legal authorization for the implementation of this agreement.

If the buyer/customer is of the opinion that Keyprocessor's exceeding of the estimated delivery time or time of commencement of the activities should be regarded as unreasonably onerous for it, the buyer/customer is obliged to nonetheless notify Keyprocessor by registered letter or bailiff's writ of establishing a reasonable delivery time or time of commencement of the activities by Keyprocessor.

Following dispatch of the notification referred to above, the buyer/customer is obliged to consult with Keyprocessor in this matter regarding exceeding the delivery time or time of commencement of the activities.

Article 13: Additional Work

Keyprocessor carries out the activities and delivers the necessary materials as shown in the agreement between Keyprocessor and the buyer/customer for the agreed price, unless stated otherwise in these general terms and conditions. Additional activities and further costs other than provided for in the agreement between Keyprocessor and the buyer/customer may only be charged by Keyprocessor to the buyer/customer if the buyer/customer has assigned in writing the additional activities to be carried out or additional materials to be delivered.

Article 14: Delivery of materials

As long as the buyer/customer has not fulfilled the consideration in respect of the goods delivered or to be delivered pursuant to this agreement, or not fulfilled the consideration for activities carried out aside from the deliveries or for compensation of damages due to shortcomings, the materials supplied by Keyprocessor or the materials delivered by Keyprocessor remain the property of Keyprocessor.

From the moment of supply of the materials on site, however, the materials are for the account and at the risk of the buyer/customer, particularly in the event of loss or damage to these goods arising from any cause whatsoever or in the event of damage or loss caused to these goods.

In this context, the buyer/customer is obliged to adequately insure the materials supplied by Keyprocessor at a reputable insurance company based in the Netherlands, especially against the financial consequences of damage, loss, theft or destruction by fire, lightning strike or any other causes whatsoever.

Keyprocessor has the right at all times to inspect the insurance policy as described in this provision.

The buyer/customer is prohibited, before the time of it owing the considerations due, therefore before the moment at which the buyer/customer has become owner of the goods as meant here, to pledge these goods to third parties, to transfer ownership of the goods or alternatively to effectively place same under the control of third parties.

Keyprocessor remains owner of the goods until such time as the goods have been processed or have otherwise become the legal property of the buyer/customer.

On infringement of these obligations by the buyer/customer, the purchase price or complete assignment price is fully and immediately due and payable.

Without prejudice to the previous rights to which it is entitled, Keyprocessor is irrevocably authorized by the buyer/customer, if it has failed or not complied with the payment obligations due to Keyprocessor in good time, without any notice of default or judicial intervention, to take back any goods supplied or if these are assembled onto movable or immovable assets, to dismantle them and to take them back.

Article 15: Risk

Products are at the risk of Keyprocessor until such time as the actual power of disposal of the buyer/customer or of auxiliary persons used by the buyer/customer has taken place, even if the property has not yet been transferred.

Article 16: Force majeure/non-attributable shortcoming

If, on the part of Keyprocessor in the implementation of the agreement, it concerns a non-attributable shortcoming (force majeure), Keyprocessor is entitled, without judicial intervention, to demand that the agreement is amended to the circumstances, either to fully or partially terminate the agreement or have same terminated by the Court, without being held liable for any compensation for damages or warranty to the buyer/customer, with compensation by the buyer/customer to Keyprocessor of the costs incurred by the latter.

A shortcoming that cannot be attributed to Keyprocessor is understood to mean any of the circumstances independent of Keyprocessor's wishes, even though it was foreseeable at the time of concluding the agreement that prevents or delays compliance of the agreement permanently or temporarily and, insofar as it has not already been understood to include riots, epidemics, fire, disruptions of traffic, labour strikes, exclusion, loss or damage during transportation, accident or disease of personnel employed by the customer or of other persons that Keyprocessor is deploying, restrictions of imports or other governmental restrictions, war, threat of war, civil war and any other serious defect within the business of Keyprocessor or its supplier(s), in any way whatsoever.

Article 17: Cancellation

Para. 1 If the buyer/customer wishes to cancel an assignment granted to Keyprocessor, this must be notified in writing to Keyprocessor for attention of the Sales Department.

Para. 2 If the buyer/customer cancels a granted assignment prior to commencement of the activities/delivery, a 20% cancellation fee will be charged, calculated on the basis of the price in the sales order.

Para. 3 The buyer/customer is entitled to change the date for a service to a date other than the date arranged beforehand, yet on the understanding that Keyprocessor is informed thereof at the latest one week (five working days) before the previously arranged date.

Article 18: Warranty, liability and complaints

Para. 1 For implementation of the assigned activities and delivery of the corresponding materials, Keyprocessor does not accept any other liability and no other warranty than expressly given to the buyer/customer in writing.

Keyprocessor is not obliged to pay compensation for costs, damages and interest due to, inter alia, damages caused either by fire or explosion, or any other cause to movable or immovable property or caused to persons as a result of or associated with activities carried out or will be performed by Keyprocessor in the broadest sense, or disadvantaging of business interests, either directly or indirectly caused by the buyer/customer or third parties, unless Keyprocessor has taken out insurance or could insure against occurrence and financial consequences of these risks, in which case the obligation to pay compensation of damages on the part of Keyprocessor is limited to the insured amount or reasonably insurable amount.

Para. 2 Keyprocessor is not responsible or liable for the consequences of directions given by the buyer/customer or third parties who act on instruction from or on behalf of the buyer/customer, which may differ from the implementation mentioned in the agreement.

Para. 3 If the buyer/customer believes that Keyprocessor does not comply with its warranty obligations, this does not discharge the buyer/client from fulfilment of its obligations arising from this agreement nor other agreements concluded with Keyprocessor, unless otherwise agreed to in writing.

Para. 4 If and as long as the buyer/customer fails to comply with any obligation applicable to it arising from the agreement concluded with Keyprocessor or an associated agreement in a prompt or proper manner, Keyprocessor is not obliged to fulfil any warranty obligations with regard to any of these agreements.

Para. 5 Complaints concerning visible defects must take place immediately upon discovery, but no later than fourteen days after the actual transfer of the products to the buyer/customer or after completion of the activities, specified in a written notification from the buyer/customer to Keyprocessor.

Complaints concerning non-visible defects must take place within a reasonable period of time after discovery, but no later than fourteen days after expiry of the warranty period, specified in a written notification from the buyer/customer to Keyprocessor. Legal action in this respect must be brought before the court within two years of the complaint being made in good time, at the risk of such a claim lapsing.

Para. 6 Without prejudice to the restrictions stated hereafter, Keyprocessor warrants both the reliability of the product delivered by it and the quality of the used and/or supplied material and the activities for a period of twelve months after delivery of the product or completion of the activities excluding visible defects.

Para. 7 Outside the warranty in any case are defects which appear to be entirely or in part the result of:

- a. Non-observance by the buyer/customer of operating instructions and/or maintenance regulations or other than the expected normal use;
- b. Fair wear and tear;
- c. Assembly/installation or repair by third parties, which is understood to include the buyer/customer;
- d. Application of any government regulation regarding the nature and/or quality of the applied materials;
- e. Materials used or matters applied in consultation with the buyer/customer;
- f. Materials or matters issued by the buyer/customer to Keyprocessor for processing;

g. Materials, matters and working methods and constructions, insofar as same is applied at the explicit instructions of the buyer/customer as well as materials and matters supplied by or on behalf of the buyer/customer;

h. Components by third parties used by Keyprocessor insofar as no warranty was supplied by the third party to Keyprocessor.

Para. 8 Keyprocessor does not guarantee in any way whatsoever matters entailing colour differences or aspect differences which, among other things, may arise due to different production dates of Keyprocessor's products.

Para. 9 If the buyer/customer fails to comply with any obligation applicable to it arising from the agreement concluded with Keyprocessor or an associated agreement in a prompt or proper manner, Keyprocessor is not obliged to fulfil any guarantees however named with regard to any of these agreements.

If, without the prior written approval from Keyprocessor the buyer/customer carries out or allows the carrying out of any dismantling, repair or other activities in respect of the product, any claim by virtue of the guarantee lapses.

Para. 10 If Keyprocessor is required to execute its warranty obligations every liability for consequential damages is excluded.

Any further liability for damages, including but not limited to damages due to latent defects for the purpose of obtaining compensation for any damages whatsoever, directly or indirectly, material or immaterial, including loss due to delay or loss of or damage due to loss of profit, is excluded, regardless of the manner and the foreseeability in respect of the origin or the extent of the damage. The buyer/customer indemnifies Keyprocessor against all claims from third parties.

Keyprocessor's warranty obligations do not extend further than the free supply of new materials. Keyprocessor expressly reserves the right in such a case to charge the buyer/customer for installation costs, call-out charges or travel costs.

If, in the fulfilment of its warranty obligations, Keyprocessor replaces components/products, the replaced components/products become its property without further settlement by the buyer/customer.

Para. 11 Should Keyprocessor still be liable on grounds of legal provisions, such liability will be limited at all times to the insured part.

Liability is excluded for the uninsured part of the damage.

If, on Keyprocessor's side, it concerns liability and it is not insured or has not reasonably been able to insure against the consequences under property law, Keyprocessor's liability is always limited to the amount of the contract price or purchase price.

Article 19: Warranty liability and complaints regarding sales of software

Right of use of the software

The following provisions apply to all software delivered by Keyprocessor to the buyer/customer.

Software is understood to mean the computer programs recorded on computer readable media and its corresponding documentation, which includes any newly upgraded versions.

Para. 1 Right of use

Keyprocessor grants the buyer/customer only the non-exclusive right of use of the software. Unless explicitly agreed to otherwise in writing and without prejudice for that matter to the other provisions in these general terms and conditions, the right of use granted by Keyprocessor to the buyer/customer exclusively comprises the right to load and use the software.

The software may be used exclusively by the buyer/customer on behalf of its own business.

The right of use is not transferable to third parties without written consent from Keyprocessor.

The buyer/customer is not permitted to sell, rent, or dispose of the software, nor transfer it as a security or in any manner whatsoever to any third party. The buyer/customer may not modify the software, permit use by third parties nor to use the software on behalf of third parties. The source code of the software is not made available to the buyer/customer.

Para. 2 Warranty with regard to the rights of use of the software

For a period of three months after the date of delivery, Keyprocessor will rectify any faults in the software to the best of its ability.

Keyprocessor does not warrant that the software will operate without interruption nor that all faults will be improved upon. Only if a maintenance agreement has been concluded or if there is a usage fee which is understood to include maintenance, will such rectification be carried out free of charge. Keyprocessor may charge the costs of rectification in the event of user errors by the buyer/customer or other causes not attributable to Keyprocessor. Recovery of any lost data is not covered by the warranty.

The warranty obligation lapses if the buyer/customer, or a third party, improves faults or makes other modifications without the written consent of the supplier.

Article 20: Product liability

Para. 1 If Keyprocessor includes materials to be supplied in its quotation, Keyprocessor bases its information in respect of these materials on the behaviour and properties supplied to it by the manufacturer or the supplier of these goods. As a result thereof, Keyprocessor is not to be held liable for damages caused in this respect unless Keyprocessor itself is the manufacturer of these materials.

If Keyprocessor itself is the manufacturer of the delivered materials, this will be confirmed to the buyer/customer in writing by Keyprocessor.

Para. 2 Keyprocessor is not liable for functional unsuitability of materials and structures, both existing and specified by the buyer/customer, on which or onto which Keyprocessor must carry out the activities.

Article 21: Infringement of intellectual property rights

Keyprocessor is not liable for costs, damages or interest arising as a direct or indirect result of infringement of patents, licenses, other industrial/intellectual property rights or other rights of third parties as a result of use of information supplied by or due to or on behalf of the buyer/customer or actions and omissions by Keyprocessor's suppliers, their subordinates or other persons employed by or on behalf of it.

Article 22: Indemnity

If, in respect of any damage for which Keyprocessor is not liable pursuant to these terms and conditions and for which the buyer/customer is liable, and Keyprocessor is held liable in any case by third parties, the buyer/client fully indemnifies Keyprocessor in this respect and for that reason will have to compensate Keyprocessor for everything that it must pay to third parties on grounds of the out-of-court settlement concluded with consent of the buyer/customer or pronounced irrevocably and by judgment from which there is no appeal or an equivalent ruling (binding third-party ruling or arbitral award).

Article 23: Exclusion of liability

The exclusion of liability or limitation thereof in accordance with these terms and conditions applies irrespective of whether the damage was caused by subordinates of Keyprocessor or non-subordinates of Keyprocessor who have undertaken activities assigned by Keyprocessor in operating its business.

Article 24: Persons supervised by buyer/customer

Persons who are inside or at the object to which the activities relate, insofar as they are not employed by Keyprocessor, are deemed to undertake activities on assignment for the buyer/customer in operating its business, subject to the supervision and command of the buyer/customer even if no supervisor is posted inside or at such object on behalf of the buyer/customer or the object does not have such a supervisor.

Article 25: Completion

Immediately after the activities assigned to Keyprocessor have been carried out and of the associated materials delivered, an inspection and completion will take place.

If there are any defects or attributable shortcomings, the buyer/customer only has the right to have the defects or attributable shortcomings rectified by Keyprocessor itself.

Any warranty obligations committed by Keyprocessor continue to remain in force even after completion.

Article 26: Payment

The buyer/customer is obliged to pay Keyprocessor in Dutch currency for the activities carried out and materials delivered or the products purchased within the agreed period but not later than 30 days after the date of submission of the invoice. Payment can only be made in the manner indicated by Keyprocessor. Payments must be made without any discount or setoff of debts.

In the event of late payment, the buyer/customer owes the statutory interest on the outstanding amount.

Article 27: Surety

Keyprocessor is entitled at all times to demand cash payment of the invoice.

Keyprocessor is entitled to demand all or part of the contract sum by way of an advance payment or an adequate collateral in the form of a suretyship contract or other form of security if, before or during implementation of the activities, Keyprocessor has clear evidence of a reduced creditworthiness of the buyer/customer.

In such event, Keyprocessor also has the right not to carry out any more work or to suspend its activities and the sum of what has already been performed immediately becomes due and payable.

Article 28: Collection

In the event of an attributable shortcoming in performance of the commitment by the buyer/customer due to non payment or late payment, Keyprocessor is entitled to recover the amount of all costs incurred, being both judicial as well as extrajudicial from the buyer/customer, of which the latter costs are determined in accordance with the Extrajudicial Collection Costs (Standards) Act.

Extrajudicial collection costs are owed by the buyer/customer the moment that Keyprocessor has engaged legal assistance from third parties for the purpose of collection.

Due to late payment of the debt by the buyer/customer, the entire debt is immediately due and payable by the buyer/customer to Keyprocessor, including the part that is not due.

Article 29: Attributable shortcoming by buyer/customer

If, during implementation of the activities, the buyer/customer fails to comply with any obligation arising from the agreement or from an associated agreement concluded with Keyprocessor in a prompt or proper manner, as well as in the event of bankruptcy, suspension of payment, suspension and liquidation of the buyer/customer or its company, Keyprocessor is at least entitled to submit an extrajudicial termination statement to the buyer/customer.

In that event, Keyprocessor is not obliged to pay any compensation of damages or fulfil any warranty and it may continue to demand payment from the buyer/customer of the agreed contract price reduced by what has been calculated for the non-delivered or non-implemented part of the activities and by any instalments already paid and increased by compensation of all damages suffered or to be suffered by Keyprocessor.

Article 30: Applicable law and competent Court

All agreements to which these conditions apply, in whole or in part, are exclusively governed by Dutch law.

All disputes that may arise as a result of an agreement to which these general terms and conditions apply in whole or in part, or endorsements of any such agreements which may be as a result thereof, will be adjudicated by the competent Court in the district court of Amsterdam, unless, within one month after Keyprocessor has invoked a stipulation on the buyer/customer in writing, the buyer/customer has chosen settlement of the dispute by the competent Court in accordance with Dutch law.