

**General Terms of Sale and Delivery**  
**of KEYTRONIX Ges.m.b.H Vienna, Austria**

**1. General**

These General Terms of Sale and Delivery shall apply between KEYTRONIX and the customer to all offers of KEYTRONIX and to all contracts of sale and delivery or services made by KEYTRONIX concerning all products equipment and software and any other type of goods (collectively hereunder referred to as "the Goods"), unless deviated from by written agreement between the parties or expressly accepted by KEYTRONIX in writing. The contract of sale and delivery between KEYTRONIX and the customer shall be hereunder referred to as "the Contract".

Ancillary agreements shall apply only if confirmed by KEYTRONIX in writing.

**2. Quotations and orders**

Written quotations by KEYTRONIX shall be binding on KEYTRONIX for 30 days from the date of quotation. Orders which are not based on a prior written quotation shall not be binding on KEYTRONIX until KEYTRONIX's written order confirmation has been received by the customer. Delivery times are calculated from the date of the order confirmation. The minimum order value amounts to Euro 1.000,00 or USD 1.300,00. In case of a lower order value, we will impose a reduced quantity surcharge of Euro 100,00 or USD 130,00. For all returned items (excl. returned items under guarantee) a restocking fee of 20 % of the sales price will be charged.

**3. Specifications and drawings**

All specifications descriptions and drawings in catalogues, datasheets, circulars, advertisements, price lists or other documentations shall be binding only if explicitly referred to in the Contract.

**4. Prices**

Unless otherwise expressly agreed in writing, all prices are ex works Siegendorf/Austria and exclude value added tax, customs and other public dues. Unless otherwise agreed, packaging is included in the price.

**5. Payment**

Payment shall be made in EUR (or as otherwise specified in the Contract or in the invoice). Unless otherwise agreed upon, invoice amounts are to be paid net within 30 days after invoice has been issued. KEYTRONIX has the right to demand a reasonable advance payment, if the current credit line is exceeded.

In case of payment by letter of credit payment shall be made by irrevocable, confirmed (by a bank and on terms acceptable to KEYTRONIX) letter of credit. KEYTRONIX must receive such letter of credit prior to any shipments being made, and the letter of credit shall be immediately payable at sight upon presentation of agreed documents. All letters of credit must permit transshipments, partial shipments, and partial payment at the option of KEYTRONIX.

All costs, including banking and other charges in connection with the payment of the purchase price by wire letter of credit or otherwise shall be born by the customer.

If the purchase price, or parts thereof, is not settled at maturity, interest shall accrue on any outstanding amount from the due date until payment in full at the rate of 12 percent per annum. Should amounts due and payable not be settled at maturity, any outstanding purchase sum for all goods delivered shall fall due for immediate payment, regardless of previously agreed credit terms.

In such cases, KEYTRONIX shall also be entitled to immediately halt further deliveries and cancel remaining or other contracts for goods not yet delivered in full or in part.

Title to goods other than software shall pass to the customer upon payment. Title to any software delivered will always remain with KEYTRONIX or the relevant third party licensor, where applicable. If delivery has been made before payment in full has been received, goods delivered shall remain KEYTRONIX's property until such payment in full has been effected. If the customer sells the goods or items into which the goods have been incorporated before the goods have been paid for in full, the customer shall hold the proceeds of the sale in trust for KEYTRONIX and shall pay the proceeds of the sale only to KEYTRONIX up to the amount due. The customer herewith assigns to KEYTRONIX in advance the future accounts receivable from resale of the goods supplied by KEYTRONIX.

## **6. Delivery**

Unless otherwise agreed upon, delivery of the goods to the customer shall be made ex works, Siegendorf/Austria. If KEYTRONIX is to arrange for transportation of the goods in accordance with diverging conditions, dispatch shall be made by the means found most appropriate by KEYTRONIX, unless a specific means of transportation has been agreed upon by the parties.

Times for delivery of the goods, if stated, are in accordance with KEYTRONIX's best estimate only and subject to KEYTRONIX's availability schedule. Any delay in transit shall be at the customer's risk, irrespective of the delivery terms agreed upon.

In case of default in delivery by KEYTRONIX the customer shall be entitled to cancel the Contract subject to the relevant legal provisions. Any damage claim brought by the customer for delay in delivery or non-performance due to default shall be excluded, unless KEYTRONIX is liable for damage caused intentionally or by gross negligence.

The right to obtain the goods duly and promptly by KEYTRONIX themselves shall be preserved.

The risk of loss of and damage to the goods shall pass to the customer acc. to the Incoterms 2008.

## **7. Complaints**

The goods must be inspected by the customer immediately on arrival, and any defect discoverable on examination, which is to be claimed against KEYTRONIX, must be notified to KEYTRONIX in writing within eight (8) days of receipt of the goods. The notice shall contain a description of the defect. Return of the goods may take place with KEYTRONIX's prior written consent only.

## **8. Warranty**

Unless otherwise agreed, the warranty period shall last for twenty-four (24) months from the date of delivery by KEYTRONIX. KEYTRONIX warrants the hardware to be free from defects in material design and workmanship and the software to be in accordance with the agreed product specification at the time of delivery. Any defect covered by the above warranty will be repaired or the defective item or media will be replaced, at KEYTRONIX's option. Goods to be repaired or replaced shall, at KEYTRONIX's option be returned to the designated place according to the instructions and authorisations of KEYTRONIX. Defective parts which have been replaced shall be made available to KEYTRONIX and shall be the property of KEYTRONIX. Transportation charges for the return of the repaired or replaced goods to the customer will be born by KEYTRONIX. KEYTRONIX is obliged to carry out dismantling and reinstallation of the goods or defective parts of them if this requires special knowledge. If such special knowledge is not required, KEYTRONIX has fulfilled its obligations in respect of the defect when KEYTRONIX delivers to the customer a duly repaired or replaced part. This warranty applies to goods which have been properly installed and adjusted in accordance with the applicable instruction manual and properly operated within specified applications and environmental

conditions only. The responsibility of KEYTRONIX under this warranty does not apply to goods (a) which have been repaired or worked upon by anyone other than those authorised by KEYTRONIX, or (b) which have been subject to misuse, negligence, or accident, or (c) from which the serial number has been altered, defaced or removed, or (d) not bearing KEYTRONIX's logo.

If the customer has given notice of defect and no defect is found for which KEYTRONIX is liable, KEYTRONIX shall be entitled to compensation for the costs it has incurred as a result of this notice.

The customer shall at his own expense arrange for any dismantling and reassembly of equipment other than the Product, to the extent that this is necessary to remedy the defect. Unless otherwise agreed, the customer shall bear any additional costs which KEYTRONIX incurs for repair, dismantling, installation and transport as a result of the goods being located in a place other than the destination stated in the contract. Where the defect has not been successfully remedied the customer is entitled to a reduction of the purchase price in proportion to the reduced value of the goods, or where the defect is so substantial as to significantly deprive the customer of the benefit of the Contract the customer may terminate the contract by written notice to KEYTRONIX.

There are no warranties, stated or implied, beyond those stated herein. This applies to any loss the defect may cause including loss of production, loss of profit and other indirect loss. This limitation of KEYTRONIX's liability shall not apply if KEYTRONIX has been guilty of gross negligence or intention. The warranty period for repaired or replaced goods (or parts thereof) will be the remainder of the initial warranty period or one hundred and eighty (180) days from delivery thereof to the customer, whichever is the later.

#### **8. General Liability**

Any other loss or damage claims against KEYTRONIX or its statutory or vicarious agents, particularly for damage not inflicted on the delivery goods itself, e.g. as due to breach of accessory contractual obligations, miscounselling, tort, shall be excluded, unless the loss or damage is caused intentionally or by gross negligence. The above limitations of and exclusions from liability shall not apply if KEYTRONIX is liable under the Austrian Product Liability Act or other national acts to incorporate the European Directive on Product Liability. This shall also apply in cases covered by section 7 above.

#### **9. Confidential information**

All commercial and /or technical information, data, specifications, drawings, other documents and software (collectively "the Confidential Information") delivered to the customer by KEYTRONIX, shall remain the exclusive property of KEYTRONIX, and this Contract shall under no circumstances be interpreted as an assignment of present or future intellectual property rights or similar rights to the customer by KEYTRONIX. The customer shall at all times treat the Confidential Information as KEYTRONIX's confidential property and shall under no circumstances use the Confidential Information to any purpose other than that contemplated hereby or disclose the same to any third party.

#### **10. Patent indemnity**

KEYTRONIX shall indemnify the customer against any lawsuit, claim or other legal action brought against the customer alleging that the customer's use of the goods infringes any patent, trade secret or other intellectual property right always provided that the customer shall have promptly advised KEYTRONIX of any such lawsuit, claim or action and cooperates with KEYTRONIX in defence and settlement thereof. KEYTRONIX shall have sole control of the defence against such action and of all negotiations for settlement or compromise thereof. The indemnity shall not apply to actions arising from (i) the use of goods produced in accordance with specifications, standards or designs provided or required by the customer or due to combining or incorporate the goods with or into a product not

furnished by KEYTRONIX or (ii) any use of any of the goods in any manner or any place not contemplated hereby.

If an injunction is obtained against the customer's use of any of the goods delivered as a result of an action which is subject to this indemnity, KEYTRONIX shall use its best efforts to either (i) procure for the customer the right to continue to use the items or (ii) replace or modify same with functionally equivalent or better items so that the customer's use is not subject to the injunction. If KEYTRONIX cannot accomplish either of the foregoing, then the customer may return the enjoined items to KEYTRONIX. Upon KEYTRONIX's receipt of such items, it shall promptly refund to the customer the price for the enjoined item and/or for the license to use the enjoined software, as the case may be, less a reasonable amount for use, damage and obsolescence.

The above provisions set forth the entire obligations of KEYTRONIX with respect to any claim of infringement of patent or copyright or misuse of proprietary or trade secret information, unless damages or loss incurred are caused by gross negligence or intention of KEYTRONIX.

### **11. Force majeure**

Notwithstanding anything else herein, no default, delay, or failure to perform on the part of KEYTRONIX shall be considered a default, delay, or failure to perform if such action is due to causes beyond KEYTRONIX's control, including war, riots, revolution, sabotage, requisition, piracy, natural cataclysms, such as violent storms, cyclones, earthquakes, tidal waves, flooding, lightning strikes, epidemics and quarantine, boycotts, explosions, fire, destruction of machinery or factories or other installations of no fault of KEYTRONIX, action by the authorities, strikes of any form, including unofficial strikes and industrial action which does not involve formal interruption of work, lock-outs, stoppages, regardless of the reason, foreign-exchange restrictions, power restrictions, lack of transportations, defects or delays in supplies from KEYTRONIX's sub-suppliers. If the circumstances exclude delivery or result in incalculable difficulties in delivery, KEYTRONIX shall be entitled to cancel the sale or delivery without liability.

### **12. Export regulations**

The parties undertake to comply with all relevant export control regulations and restrictions such as, but not limited to, those imposed by the Federal Republic of Germany. The customer specifically acknowledges that the goods and technology supplied by KEYTRONIX, its affiliates, subsidiaries or subcontractors hereunder are subject to trade sanctions and export control laws and regulations of the Federal Republic of Austria and shall not be exported, re-exported, transhipped, diverted or transferred directly or indirectly, contrary to laws, orders or regulations of the Federal Republic of Austria.

### **13. Software license**

Unless otherwise agreed, the following license shall apply for the customer's use of any software delivered by KEYTRONIX hereunder. "Software" shall mean any digital instruction sequences or control data contained on any media, including but not limited to, any magnetic-, electronic-, optical-, or organic device, as well as associated documentation used to describe and use the same, and the term "software" shall include any enhancement, modification, extension, part, portion or expansion thereof or implementation or downloading from network of any of the foregoing. The customer is hereby granted a non-exclusive, non-transferable license to use the software only with the applicable KEYTRONIX equipment for its own international business purposes and subject to the particular type of license acquired.

The customer shall not without the prior written consent of KEYTRONIX (a) modify the software; (b) reproduce or copy the software except for back-up or emergency purposes; (c) remove any trademark,

tradename, copyright notice or other proprietary notice from the software, and the customer shall be responsible for the conservation of the same on any back-up copy of the software; (d) provide, disclose, or make the software available to any person or party except for its employees on a need-to-know basis; (e) translate, reverse engineer, decompile or disassemble the software; or (f) perform or release benchmarks or other comparisons of the software. The customer shall (a) hold the software in confidence for the benefit of KEYTRONIX; (b) forthwith return to KEYTRONIX any and all software which has been replaced, modified, or updated; (c) issue adequate instructions to all relevant parties and take all actions necessary to comply with the customer's obligations under this license; and (d) treat all software as KEYTRONIX's exclusive property.

If the customer breaches this license, KEYTRONIX may terminate the license with immediate effect, whereupon the customer shall return to KEYTRONIX all software and copies thereof within 10 days. The software may contain authorization keys and license control utilities which may not be modified or made inoperable by the customer.

This software license also comprises any third party software forming part of the software delivered hereunder, it being understood that ownership to such third party software is with KEYTRONIX's licensees but that third party licensees warranties, guarantees, liabilities, and indemnities relating to such software does not extend to the customer or to the customers use thereof. The customer, however, agrees to respect all license requirements of such third party licensees as set out in the third party's license conditions delivered with the goods to the customer.

#### **14. Legal venue and applicable law**

The Contract shall be governed by and construed in accordance with Austrian law. The provisions of the UN Sales Convention (CISG) shall be excluded. All disputes arising out of or in connection with the Contract shall be finally settled under the Rules of the "International Arbitral Centre of the Austrian Federal Economic Chamber." by one or more arbitrators appointed in accordance with the said rules. The place of arbitration is Vienna. The proceedings shall be conducted in the English language. However, KEYTRONIX may sue the customer at the ordinary courts of law having jurisdiction of residence of the customer, if KEYTRONIX so choose. Incoterms 2008 shall apply as most recently amended.

#### **15. Severability**

Should any one or more provisions of this General Terms of Sale and Delivery or of the Contract be or become invalid, the validity of the other provisions and of the Contract shall not be affected thereby. The invalid provisions shall be replaced by valid provisions that come closest to the economic intention pursued by the parties by the invalid provisions.