

## GENERAL CONDITIONS APPLIED TO SUPPLY AND DELIVERY

### GENERAL CONDITIONS APPLIED TO SUPPLY AND DELIVERY by:

- **Keylight Design & Supply B.V.**

- established at its office Morsweg 140, Leiden, Netherlands

### Article 1: Definitions

In these general conditions,

**KD&S** means Keylight Design & Supply B.V.;

**non-end-user** means any client of KD&S dealing by way of trade or profession;

**purchaser** does not mean the end-user.

### Article 2: Scope of application

1. These conditions apply to any offer or agreement between KD&S and purchaser to which KD&S states them to apply unless and to the extent that the parties agree otherwise expressly and in writing.
2. These conditions are likewise applicable to any agreement with KD&S involving third parties in its carrying-out.

### Article 3: Offers

1. Offers made by KD&S are non-binding and lapse 30 days at most after the date thereof.
2. Notwithstanding the provisions of Article 6:225, paragraph 2, of the Dutch Civil Code, KD&S shall not be bound by any modifications of its offer that are attached to the potential purchaser's acceptance.
3. Such times for supply or for the performance of any other action by KD&S as may be mentioned in its offers are given by way of general indication and if exceeded shall not constitute any ground for compensation or cancellation.
4. Prices mentioned by KD&S are, unless otherwise stated, based on the fulfilment of orders during normal working-hours and are exclusive of transport, packing, delivery and installation costs, value added tax and any other levies imposed by the authorities.
5. In the case of an offer comprising several elements, KD&S shall not be obliged to supply any portion thereof for a proportionate price, nor shall the terms of the offer apply automatically to any subsequent order.
6. KD&S is bound by its offer only if the potential purchaser confirms acceptance within 30 days in writing. Unless otherwise stated, all prices are exclusive of value added tax. (See also sub 1 above)

### Article 4: Supply and Delivery

1. Supply is ex-factory unless otherwise agreed. If one of the "Incoterms" is agreed upon as a condition of supply, the Incoterms in force at the time of the conclusion of the agreement shall apply.
2. Purchaser is obliged to take any purchased item from the moment of its delivery to him or from the moment when it is placed at his disposal under the terms of the agreement.
3. Should purchaser refuse to take delivery or neglect to furnish any information or instructions necessary therefor, the item will be stored at his risk and he shall be liable for any extra costs including, in any case, the costs of storage.

### Article 5: Delivery Times

1. The delivery times stated by KD&S are always approximate and never inexorable time-limits.
2. Consequently, should any stated time for delivery be exceeded, it shall be for the purchaser to warn KD&S and fix a reasonable period for it to comply with its obligations.
3. The delivery time stated by KD&S shall not begin to run until KD&S is in possession of all requisite data.

### Article 6: Partial Delivery

KD&S may fulfil orders in instalments, though this shall not apply where any item or items thus delivered would have no independent value. In the event of such partial delivery, KD&S may invoice each delivered part separately.

### Article 7: Technical requirements etc.

1. If an item to be supplied in the Netherlands is to be used outside the Netherlands, KD&S shall not be responsible for ensuring that that it complies with such technical requirements, standards or prescriptions as are laid down by the laws or regulations of the country where it is to be used. This shall not however apply if, at the time of conclusion of the agreement, mention is made of the intended use outside the Netherlands and KD&S is provided by purchaser with all necessary data and specifications relevant thereto.

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2. Any technical requirements demanded of an item to be supplied which differ from those which normally obtain must be expressly stipulated by purchaser at the time of conclusion of the agreement.

### Article 8: Samples, models and illustrations

Any sample, model or illustration shown or provided by KD&S is assumed to have been shown or provided solely by way of indication; the item to be supplied may vary in certain features from the sample, model or illustration in question in the absence of any express stipulation that said item must be supplied in conformity with the sample, model or illustration shown or provided.

### Article 9: Dissolving of the Agreement

1. An agreement between KD&S and a purchaser may be dissolved with immediate effect in the following cases:
  - In the event that after the conclusion of the agreement circumstances come to the knowledge of KD&S which give KD&S good reason to fear that purchaser will not honour his commitments.
  - In the event that on the conclusion of the agreement KD&S has asked purchaser for a guarantee that he will comply with its terms and that despite a formal reminder no or no adequate guarantee has been provided.
  - In the above cases KD&S is entitled to suspend the further performance of the agreement, or to proceed to dissolve it, without in either event affecting the right of KD&S to demand compensation.
2. If, owing to circumstances involving persons and/or materials employed or earmarked by KD&S for the purpose of implementing the agreement, such implementation becomes either impossible or so fraught with difficulty and/or so disproportionately costly that fulfilment can no longer reasonably be required, KD&S shall be entitled to dissolve the agreement.

### Article 10: Guarantee

1. KD&S guarantees that the items it supplies are free of defects in design, material and manufacture for a period of 12 months from delivery.
2. If an item supplied shows any defect in design, material or manufacture, purchaser has a right to its repair. KD&S may choose to replace the item if repair would involve difficulties.
3. The guarantee is invalidated if damage results from incorrect handling or incorrect observance of instructions.
4. The expression incorrect handling is understood to cover *inter alia* inappropriate methods of transport, overloading, subjection to incorrect voltage, and non-observance of the instructions in manuals supplied.
5. Where the guarantee concerns a product made by a third party, it is limited to the guarantee provided by the producer in respect of the product concerned.

### Article 11: Reservation of ownership

1. All items supplied by KD&S remain the property of KD&S until purchaser has complied with all the obligations arising out of all such purchase agreements as he has concluded with KD&S.
2. Items supplied by KD&S which by virtue of paragraph 1 remain subject to the reservation of ownership may be sold on only in the normal pursuance of purchaser's business or profession and may never be used as a means of payment.
3. Purchaser is not entitled to pledge or in any way encumber items that remain subject to the ownership reservation.
4. In all cases where KD&S intends to exercise its rights of ownership, purchaser henceforth gives KD&S, or such third party as KD&S may designate, permission to enter any place or places where property of KD&S may be located and to remove therefrom any items of such property.
5. Should any third party seek to distrain or otherwise claim or exercise a right over property supplied subject to reservation of ownership, purchaser must inform KD&S accordingly as soon as may reasonably be expected.
6. Purchaser undertakes to insure and keep insured all items supplied under reservation of ownership against damage by fire, explosion and water and also against theft, and immediately upon request to produce the relevant policy for inspection.

### Article 12: Defects - time-limits for complaints

1. Purchaser must examine purchased items, or have them examined on his behalf, as soon as possible after delivery.
  - In so doing, purchaser must check whether what has been delivered is in conformity with the agreement, i.e.:
    - whether the right items have been supplied;
    - whether the items correspond in quantity or number with the terms of the agreement;
    - whether they satisfy the agreed standards of quality or, should no such norms have been agreed, are of the quality required for normal use and/or the purposes of the trade.
2. Purchaser must within 3 days after delivery inform KD&S in writing of any visible defects or deficiencies.
3. Purchaser must inform KD&S in writing of any non-visible defect within 3 days after its being discovered, but at all events within 30 days after the delivery.

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4. Purchaser's obligations to pay and take delivery remain notwithstanding his timely submission of a claim.
5. Items can only be returned with the explicit written permission of KD&S.

**Article 13: Prices/Price-increases**

1. Unless expressly stated otherwise, the prices offered by KD&S are understood to be
  - o in Dutch currency
  - o exclusive of value added tax
  - o based on the minimum quantities that KD&S is prepared to supply
  - o exclusive of carriage costs
  - o ex factory
2. Where KD&S and purchaser agree upon a price, KD&S shall nevertheless be entitled to raise it if able to demonstrate that between offer and delivery significant rises have taken place in the cost of raw materials, currencies and/or wages or out of otherwise unforeseen circumstances.
3. Purchaser shall have the right to cancel the agreement if the price agreed is raised by more than ten per cent.

**Article 14: Packaging**

1. Any packaging supplied on loan must be returned by purchaser empty and undamaged within 14 days. Should purchaser fail to meet his obligations in respect of packaging he shall be liable for all contingent costs. These include, for example, the costs arising out of the non-timely return of packaging, the costs due to degradation, the costs of repair and cleaning.
2. Should purchaser, after a warning, fail to return the loaned packaging within a time to be mentioned therein, KD&S shall be entitled to proceed to a replacement and charge purchaser therefor, provided that the warning expressly so states.

**Article 15: Payment**

1. Payment shall be due within the number of days specified on the invoice, and within 30 days at most after the invoice date, and is to be made in a manner to be indicated by KD&S and in the currency as invoiced.
2. Once the number of days, thirty at most, specified by the invoice has elapsed without payment having been received, purchaser shall be legally in default; from the moment of his being in default he shall also be liable for interest on the sum due at the rate of one per cent per month unless the legal rate of interest stands higher, in which case the legal rate shall apply.
3. In the event of purchaser's liquidation, bankruptcy or suspension of payment, the fulfilment of all KD&S's claims upon him and of all his obligations to KD&S shall be immediately demandable.
4. Payment must be made without discount or offsetting.
5. Payments shall be applied in first instance to any outstanding interest or costs and in second instance to such unpaid invoices as have been outstanding longest, even if purchaser specifies that the payment in question relates to a later invoice.

**Article 16: Limitation of credit**

KD&S shall be entitled to apply a two per cent credit-limitation surcharge, which however shall not be payable if payment is received within the specified number of days from the date of the invoice.

**Article 17: Costs of debt-collection**

1. In the event of purchaser's breach or default in respect of any one or more of his obligations, he shall be liable for all judicial or extrajudicial costs incurred for the purpose of obtaining satisfaction. Purchaser shall in any case be liable for:

balances up to	€	6.500,00	15%
for a greater balance up to	€	13.000,00	10%
for a greater balance up to	€	32.500,00	8%
for a greater balance up to	€	130.000,00	5%
for a greater balance			3%

2. If KD&S can show that it incurred further expenses which may reasonably be viewed as having been necessary, these may also be considered as subject to reimbursement.

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### Article 18: Liability

KD&S shall be liable to purchaser solely in the following manner:

1. In respect of damage as a result of defects in items supplied, liability shall be strictly confined to what is provided in Article 10 (Guarantee) of these Conditions.
2. KD&S is liable for damage solely if it is caused by KD&S or its employees deliberately or through serious fault on their part.
3. The liability of KD&S is limited to the amount to be paid by its insurer in the given case.
4. If, in any given case where liability lies with KD&S, the insurer offers no cover or makes no payment, the liability of KD&S shall be limited to twice the invoice-value of that part of the transaction in respect of which it is liable.

### Article 19: Force majeure

1. In these General Conditions, the term force majeure comprises, in addition to its connotations in statute and case law, all foreseen or unforeseen external factors, including strike action at its workplace, over which KD&S can exert no influence but which nevertheless render it unable to honour its undertakings.
2. KD&S's obligations to supply and other commitments shall remain suspended for so long as a situation of force majeure prevails. Should the period wherein force majeure prevents KD&S from honouring its undertakings exceed two months, either party shall be entitled to dissolve the agreement without giving rise thereby to any duty of compensation.
3. If at the moment when force majeure takes effect KD&S has already been able to perform part of its undertakings, or can perform them only in part, KD&S shall be entitled to invoice the delivered or still deliverable part separately and purchaser shall be under obligation to settle the invoice as if it related to a separate contract. This shall not however apply if the delivered or deliverable part has no independent value.

### Article 20: Settlement of disputes

Sole authority to determine disputes lies with the *rechter* of the town wherein KD&S has its premises, unless the *kantonrechter* is so empowered. KD&S shall nevertheless have the right to sue the other party in such court as the law provides.

In the event of a dispute as to the meaning of these Conditions, the [Dutch text](#) shall be authoritative.

### Article 21: Applicable law

The law of the Netherlands shall be applicable to every agreement between KD&S and purchaser. The Vienna Convention on Sale is expressly excluded.

### Article 22: Changes and Place of Deposit

These Conditions have been deposited at the Chamber of Commerce, The Hague.

The applicable terms shall always be those of the last deposited version or, as the case may be, those of the version in force at the time of conclusion of the individual contract.