



## KEYSIGHT TERMS OF SALE

These Terms of Sale ("Terms") govern the sale of Products, Service, Professional Services and the license of Software by Keysight Technologies, Inc. and its subsidiaries ("Keysight"). "Product" means any standard hardware sold or standard Software licensed under these Terms. "Software" means one or more computer programs and related documentation. "Service" means any standard support service to support Products, or Software updates and maintenance. "Professional Services" means consulting services or training. "Specifications" means technical information about Products published by Keysight and in effect on the date Keysight ships the order.

The Keysight quote or similar order form ("Quote"), these Terms, any Statement of Work or description of deliverables ("SOW") from Keysight for any Service or Professional Services, any and all Keysight end user license agreements ("EULA") accompanying Products or Software, and Keysight's warranty are collectively referred to herein as the "Terms."

### 1. SALE AND DELIVERY

- a) All orders are subject to acceptance by Keysight. Keysight's acceptance of Customer's order is expressly limited to, and conditioned on, these Terms. Keysight objects to and rejects any terms or conditions in any communication or purchase order from Customer that are in addition to or different from those contained in these Terms. The fulfillment of Customer's order and the invoicing of Customer will not constitute acceptance of any of Customer's terms and conditions or serve to modify these Terms. Orders are governed by the applicable trade term specified on the Quote or agreed to by Keysight as defined in Incoterms 2020.
- b) Prices exclude any applicable sales, value added or similar tax payable by Customer.
- c) Unless otherwise indicated on the Quote, prices include shipping and handling charges. Title to hardware Products will pass to Customer upon delivery.
- d) Unless otherwise indicated on the Quote, Customer may cancel orders prior to shipment at no charge. Product returns are subject to Keysight approval and applicable charges. All delivery dates are approximate and not guaranteed, and Keysight will have no liability for late delivery. Keysight reserves the right to make partial shipments.
- e) For Products without installation included in the purchase price, acceptance occurs upon delivery. For Products with installation included in the purchase price, acceptance occurs when the Product passes Keysight's installation and test procedures. If Customer schedules or delays installation by Keysight more than thirty (30) days after delivery, acceptance of the Product will occur on the thirty-first (31st) day after delivery.
- f) Payment terms are stated in the Quote or acknowledgment documentation, and are subject to change if Customer's financial condition or payment record merits such change. Keysight may discontinue performance or suspend Customer's license if Customer fails to pay any sum due, or fails to perform under this or any other Keysight agreement if, after ten (10) days written notice, the failure has not been cured.
- g) Customer will be liable for all expenses, including legal fees, relating to the collection of past due amounts and/or Keysight's enforcement of these Terms. If any payment owed to Keysight is not paid when due, it will bear interest from the due date until paid at a rate of one percent (1%) per month (or the maximum rate permitted by applicable law, if less).
- h) Customer agrees that, except as otherwise expressly stated in an SOW, Customer will reimburse Keysight for all reasonable out-of-pocket travel, lodging, and other related expenses incurred by Keysight in connection with any Professional Services.

### 2. LICENSES

- a) With the exception of test scripts and related documentation (collectively, "Test Scripts"), all Software is licensed to Customer pursuant to the applicable EULA included with that Software. Copies of each EULA are available at [www.keysight.com/view/eula](http://www.keysight.com/view/eula), as documentation provided with the Software, or upon request. If the Software documentation does not include license terms, Keysight grants Customer a worldwide, non-exclusive, non-transferable, revocable (if any applicable license fees are not paid), limited license to use one copy of the Software on one machine or instrument for internal purposes or, if applicable, Keysight grants Customer the license as otherwise stated on the Quote. Software may contain third-party software with separate license terms that may apply and take precedence to the extent Customer's use exceeds the license granted herein.
- b) When Software is delivered electronically, such delivery will be deemed to have occurred when (i) Keysight has notified Customer of, and has given Customer access to, a website from where the Software can be downloaded, and (ii) Keysight has given Customer any and all license key(s) needed to download, install, and/or activate the Software. When Software is installed by Keysight, delivery and acceptance will be in accordance with Section 1(e).
- c) Except as authorized by Keysight in writing or as permitted by law, Customer will not reverse engineer, reverse compile, or reverse assemble Software, modify or translate Software, or copy Software onto any public or distributed network.

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- d) Notwithstanding anything to the contrary in these Terms, all Software, Service and Professional Services deliverables are licensed and not sold, and the use of terms such as "sale" and "purchase" in connection with those items will be understood as a reference to licensing of those items.
- e) For Test Scripts and for all Service and Professional Services deliverables that do not constitute Software, Keysight grants to Customer a limited, non-exclusive, non-transferable, perpetual, worldwide license to copy and use such items only for Customer's internal business purposes.
- f) As between Keysight and Customer, Keysight is and shall remain the exclusive owner of all intellectual property rights in or related to any of the Products, Service and Professional Services.

**3. WARRANTY**

- a) Product warranty terms are provided with the Product, on Quotes, upon request or at [www.keysight.com/go/warranty\\_terms](http://www.keysight.com/go/warranty_terms). Each Product receives a global warranty which includes the standard warranty for the country of purchase.
- b) Keysight warrants the Keysight hardware Product against defects in materials and workmanship and that the Product will conform to Specifications. Keysight warrants that Keysight owned standard Software substantially conforms to Specifications.
- c) If Keysight receives notice of a defect or non-conformance during the warranty period, Keysight will, at its option, repair or replace the affected Product. Customer will pay shipping expenses for return of such Product to Keysight. Keysight will pay expenses for shipment of the repaired or replacement Product. Unless otherwise agreed by the parties in writing, Customer shall be solely responsible for customs documentation to be properly prepared and customs procedures to be completely fulfilled in accordance with the applicable legislation before proceeding with Product returns to the extent they are allowed and specified in these Terms.
- d) THE WARRANTIES IN THESE TERMS ARE EXCLUSIVE, AND NO OTHER WARRANTY, WHETHER WRITTEN OR ORAL, IS EXPRESSED OR IMPLIED. KEYSIGHT SPECIFICALLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

**4. INTELLECTUAL PROPERTY CLAIMS**

- a) Keysight will defend or settle any claim against Customer that a Product infringes an intellectual property right, provided Customer promptly notifies Keysight in writing and provides control of the defense or settlement, and assistance, to Keysight.
- b) In defending or settling an infringement claim under Section 4(a), Keysight will pay infringement claim defense costs, settlement amounts and court-awarded damages. If such a claim appears likely, Keysight may, at its option, modify or replace the Product or procure any necessary license. If Keysight determines that none of these alternatives is reasonably available, Keysight will refund Customer's purchase price upon return of the Product.
- c) Keysight has no obligation for any claim of infringement arising from: Keysight's compliance with, or use of, Customer's designs,

specifications, instructions or technical information; Product modifications by Customer or a third-party; Product use prohibited by or outside the scope of Specifications or related application notes; or use of the Product with products not supplied by Keysight.

**5. LIMITATION OF LIABILITY AND REMEDIES**

- a) To the maximum extent permitted by law, in no event will Keysight, its subcontractors, or suppliers be liable for any special, incidental, indirect, consequential damages, downtime costs, loss of data, restoration costs, lost profits, or lost revenue. In addition, Keysight, its subcontractors, or suppliers will not be liable for any damages related to Customer's or any end user's network or operating environment, use of, or inability to access or use, its network or operating environment. These limitations apply regardless of whether such claims are based on contract, tort, warranty or any other legal theory, even if advised of the possibility of such damages. This exclusion shall apply even if any remedy set forth in these Terms fails its essential purpose.
- b) The limitations set forth in Section 5(a) above will not apply to infringement claims under Section 4, to damages for bodily injury or death, or to damages resulting from willful misconduct or fraudulent misrepresentation.
- c) The remedies in these Terms are Customer's sole and exclusive remedies.

**6. INDEMNIFICATION**

Keysight will indemnify Customer from and against any third-party claims for (i) bodily injury or death, or (ii) direct damage to tangible property, to the extent caused by Keysight's negligence or willful misconduct in performing its obligations under these Terms, provided Keysight is given prompt written notice and the opportunity to control the defense of the claim or settlement. Keysight's indemnity obligation is limited to payment by Keysight of Customer's defense costs, including reasonable attorney's fees, Keysight approved settlements and court-awarded damages. Keysight will not be liable for any costs or expenses incurred by Customer without Keysight's prior written consent.

**7. GENERAL**

- a) Keysight may collect personal data in connection with these Terms. Keysight will process such personal data as set forth in Keysight's Customer Privacy Statement, available at [www.keysight.com/go/privacy](http://www.keysight.com/go/privacy). Keysight will not sell, rent or lease personal data to others.
- b) Terms for Service are available at [www.keysight.com/go/service\\_terms](http://www.keysight.com/go/service_terms), upon request, or as otherwise indicated on the Quote.
- c) The parties agree to comply with applicable laws and regulations. Keysight may suspend performance if Customer is in violation of applicable laws or regulations.
- d) Customer expressly agrees that it assumes full responsibility for obtaining any and all required export authorizations from all

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- applicable government authorities prior to exporting, re-exporting or transferring Products, technology or technical data and for complying with all applicable laws and regulations relating to any such transfer or transaction. Customer shall not sell or transfer Products, technology or technical data to any entity designated or identified by the U.S. Government as a restricted person or included on any U.S. Government-maintained restricted person list, including, but not limited to, (i) the Specially Designated Nationals and Blocked Persons List, (ii) the Foreign Sanctions Evaders List, (iii) the Sectoral Sanctions Identification List, (iv) the Entity List, (v) the Denied Persons List, and (vi) the Unverified List (collectively, "US Restricted Lists"). Further information on these and other applicable lists can be found at [www.treasury.gov](http://www.treasury.gov) or [www.bis.doc.gov](http://www.bis.doc.gov). Keysight may, in its sole discretion, suspend performance or cancel all or part of the order if Customer is designated on US Restricted Lists or does not comply with the provisions of this section and may, in its sole discretion, refuse to perform any post-sale services with respect to the Product (including, but not limited to, any repair or replacement under warranty) if such activities would involve in any way, an entity on any US Restricted Lists. Keysight may, in its sole discretion, require Customer to provide an end user certificate and/or an export license prior to Keysight's delivery of any Product or item to Customer.
- e) A party is excused from and not liable for performance of its obligations under these Terms for any occurrence beyond its reasonable control and without its fault or negligence including, but not limited to, acts of God (such as fires, floods, storms, earthquakes, hurricanes or other natural disasters), acts of the public enemy (such as civil war, rebellion, revolution or terrorist activities), regulations, acts or restraints of a government in either its sovereign or contractual capacity, epidemics, quarantine restrictions, strikes, lockouts, interruption or failure of utilities, or acts or omissions of common carriers.
- f) Use, distribution or disclosure of Products by the U.S Government is subject to DFARS 227.7202-3 (Rights in Commercial Computer Software), DFARS 252.227-7015 (Technical Data – Commercial Items), and FAR 52.227-19 (Commercial Computer Software-Restricted Rights).
- g) Disputes arising in connection with these Terms will be governed by the laws of the State of California.
- h) To the extent that any provision or a portion of any provision of these Terms is determined to be illegal or unenforceable, the remainder of these Terms will remain in full force and effect.
- i) The United Nations Convention on Contracts for the International Sale of Goods will not apply to these Terms.
- j) Products are intended for professional and industrial use only, and are not suitable for consumer or household use, and Customer represents and warrants that it is not acquiring Products for such uses. Consumer or household use, or use outside of the Specification for the Product, will nullify Sections 2(a), (b) and (e), 4(a) and (b), 5(b) and 6 of these Terms and void the warranty terms set out, or incorporated in, Section 3. Products are not specifically designed, manufactured or intended for sale as parts, components or assemblies for the planning, construction, maintenance or direct operation of a nuclear facility. Keysight shall not be liable for any damages resulting from such use.
- k) These Terms and any supplemental terms applicable to the order constitute the entire agreement between Keysight and Customer, and supersede any previous communications, representations or agreements between the parties, whether oral or written, regarding transactions hereunder.
- l) Keysight may assign or transfer any of its rights or obligations under these Terms upon notice in connection with a merger, reorganization, transfer, sale of assets or product lines, demerger or spin-off transaction or change of control or ownership of Keysight, or its permitted successive assignees or transferees. Customer may not transfer or assign these Terms without Keysight's prior written consent.
- m) All information provided by Keysight in connection with any roadmap presentation is for informational purposes only, is not binding upon Keysight, and does not constitute part of these Terms; such information reflects Keysight's present plans and is subject to change by Keysight at any time and without notice.