



# Sales Terms and Conditions

**1 APPLICABILITY.** These Terms govern the sale of Knowledge Development for Rugged Optical Communications S.L. (KDROC) Products to the customer identified in a KDROC order acknowledgement form or in KDROC's valid quotation ("Customer"). These Terms, together with any special terms provided on KDROC's valid quotation, constitute the entire agreement between KDROC and Customer and may not be changed except by an amendment signed by KDROC's authorized representative. These Terms supersede any previous communications, representations or agreements between the parties, whether oral or written, regarding the sale of Products except as otherwise agreed in writing. Customer's additional or different terms and conditions will not apply. Customer's purchase of Products constitutes Customer's acceptance of these Terms.

A "Product" is any component identified on the applicable KDROC quotation or order acknowledgment form.

**2 ORDER APPROVAL.** No order will be binding for KDROC unless and until the customer receives a written acknowledgment sent by electronic or other means accepting the order. Orders must specify Requested Delivery Dates within six (6) months from order date unless otherwise agreed in the order acknowledgement. KDROC acceptance of Customer's purchase order is expressly conditional on Buyer's assent to these Terms and Conditions. KDROC's failure to object to any purchase order, specification, or other document or communication from Customer shall not be deemed a waiver of these Terms and Conditions. Acceptance of the products and services by Customer will constitute acceptance by Customer of these Terms and Conditions. The Terms and Conditions set forth herein shall be applicable whether or not they are attached to or enclosed with the products sold hereunder.

Minimum order and/or minimum packaging quantity requirements may apply.

**3 PRICES.** Irrespective of any prices quoted by KDROC or listed on Customer's purchase order, an order is accepted only at the prices shown on KDROC's acknowledgment or invoice. Prices are subject to change by KDROC without prior notice to Customer. Prices exclude delivery charges. If special shipping instructions are agreed KDROC will bill additional charges separately.

Prices exclude any sales, value added, duties, GST, withholding, or other tax that Customer will pay in addition to the purchase price if applicable. If Customer claims exemption from tax, Customer must provide a certificate of exemption.

Customer will provide VAT-ID numbers to support VAT exemptions of intra-community supplies where appropriate as governed by applicable national legislation and Directive 2006/112/EC. Customer will notify KDROC immediately if the VAT-ID number provided becomes invalid or is changed or amended in any way. KDROC reserves the right to retroactively charge VAT if VAT has been incorrectly exempted when it is a consequence of incorrect information provided by the Customer.

The quotation in an Offer, whether or not accepted, is based on USD or EUR market price and cost outlook and therefore subject to change in case of significant exchange rate fluctuations, tariffs or raw material prices.

Basis of quotation in an offer, whether or not accepted, is the indicated Start of Production (SOP), being the start of the price matrix. Any change in SOP will equivalently shift the price matrix.

**4 DELIVERY.** KDROC will endeavour to ship on KDROC's acknowledged delivery date ("Acknowledged Date"). Shipping dates are approximate. Unless otherwise expressly

provided herein, delivery of the products hereunder shall be made EXW KDROC's designated point of shipment (Ex Works-Incoterms 2010). "Delivery" occurs when KDROC places Product at Customer's or Customer's representative's disposal at the designated point of shipment. KDROC may make partial deliveries, which may be separately invoiced. Delivery delay will not relieve the Customer of its obligation to pay for Products or to accept subsequent deliveries. If KDROC cannot meet the Acknowledged Date, Customer and KDROC may agree to alternative arrangements. In the absence of such agreement, Customer's sole remedy is to cancel any portion of an order that KDROC cannot deliver in compliance with the Acknowledged Date.

KDROC will not be liable for performance delays or for non-performance due to events of Force Majeure or other causes beyond its reasonable control. If such an event occurs, KDROC may, at its option, (i) extend the Delivery date and/or (ii) allocate its available supply among its customers when it is unable to supply its total demands and/or commitments.

In the event of shipment errors, such as wrong Product, quantity, or shipment to the wrong location, Customer must notify KDROC within thirty (30) days from delivery date. KDROC will then verify the claim and ship replacement parts or correct the error, as appropriate.

**5 FORCE MAJEURE.** KDROC shall not be liable for any delay in delivery or non-delivery of due to causes beyond KDROC's reasonable control, including but not limited to acts of God, acts of Customer, acts of civil or military authority, labour disputes, labour shortages, utility shortages, materials shortages, delays in transportation or inability due to causes beyond KDROC's reasonable control. In the event of any such delay, the date of delivery shall automatically be extended for a period equal to the time lost by reason of the delay. For other than these preceding causes, KDROC shall not be in default for failure to deliver.

**6 TRANSFER OF TITLE AND ACCEPTANCE.** Risk of loss and damage to Products will pass to Customer in accordance with agreed INCOTERMS (4). Acceptance will take place also in accordance with agreed INCOTERMS.

**7 PAYMENT.** Unless otherwise specified, upon KDROC's credit approval, payment is in advance. KDROC may change credit or payment terms at KDROC's discretion. KDROC may discontinue performance if Customer fails to pay any sum due or if Customer fails to cure another breach of this or any other KDROC agreement after ten (10) days written notice of the breach.

All payments shall be in Euros or United States Dollars whichever option is agreed upon order acknowledgement.

Interest to cover for management costs will accrue on all late payments, at the rate of 20% per annum or the applicable statutory rate, whichever is higher and to the extent permitted by applicable law, from the due date until payment in full.

**8 RESCHEDULED DELIVERY AND CANCELLATIONS, NO RETURNS.** Customer may reschedule Delivery of Product up to thirty (30) calendar days before the Acknowledged Date as described in the table below. No such reschedule shall be for delivery later than thirty (30) days after the originally scheduled Delivery date. Customer may incur charges for modifying Product delivery schedules or for cancelling Product orders. These charges shall include all costs, direct and indirect, incurred and committed by KDROC together with a reasonable allowance for other expenses incurred by KDROC in connection with such cancelled order. KDROC will not accept rescheduling of orders after Product shipment.



<b>Days before AD</b> (Acknowledged date)	<b>Rescheduling</b>	<b>Cancellation</b>
0-30 days	not possible	not possible
31-60 days	rescheduling out up to 30 days from original AD	not possible
> 60 days	rescheduling out up to 60 days from original AD	possible with charges (as explained in Section 7)

Customers may not cancel orders or return Products except as provided in Section 4 (Delivery) or Section 9 (Warranty).

**9 WARRANTY.** KDROC warrants that, during the Warranty Period, Product shall conform substantially to KDROC's relevant published technical or functional specifications in effect on the date KDROC ships Customer's order ("Specifications"). This warranty extends only to Customer and not to indirect purchasers or users.

For purposes of this Section 9, "Warranty Period" means the period of time beginning with shipment and continuing one (1) year.

(a) Customer shall promptly notify KDROC in writing of any breach of warranty. No products shall be returned to KDROC against warranty without the prior authorization of KDROC. If KDROC gives authorization, Products shall be shipped to KDROC at Customer's expense. KDROC will pay back freight costs if warranty adjustment is made;

(b) Upon receipt of the returned products, KDROC will examine such products to determine to its own satisfaction that the claimed defect is not a result of improper or inadequate maintenance; higher assembly; use with Customer or third party supplied software, interfacing or supplies; unauthorized modification; improper use or operation outside of the Specifications; abuse, negligence, accident, loss or damage in transit; improper site preparation; or unauthorized maintenance or repair.

(c) KDROC will notify Customer in the event the Products are not subject to warranty adjustment and Products will be returned to Customer at Customer's cost.

(d) This limited warranty extends to the original Customer only, and not to Customer's customers or other secondary purchasers.

In the event that KDROC confirms defects or non-conformance to Specifications during the Warranty Period, KDROC will, at its option, repair or replace the affected Products, or grant the Customer the right to (i) a refund of the net purchase price of the affected Products, or (ii) rescind the Agreement only as it applied to the affected Products without costs, or (iii) demand compensation for damages or vain expenses. In any case the warranty end period will not change from the original one.

THE ABOVE WARRANTIES ARE EXCLUSIVE AND NO OTHER WARRANTY, WHETHER WRITTEN OR ORAL, IS EXPRESSED OR IMPLIED. KDROC SPECIFICALLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

**10 INDUSTRIAL AND INTELLECTUAL PROPERTY. LICENSE.** The industrial and intellectual property rights arising from any kind of information, documentation, development, engineering, know-how, procedure, technique, methodology, template, form, spread sheet, data base, use by KDROC in the provision of the services, as any subsequent modification thereto is and will continue to be exclusively owned by KDROC.

Notwithstanding the above, KDROC may grant a non-exclusive license under the terms and conditions that the parties will agree for each individual contract and use in the field of the Customer's activities.

KDROC shall not assign or transfer of any industrial and intellectual property rights to the Customer under this terms and conditions. As a consequence, KDROC is and shall remain the sole owner of the industrial and intellectual property rights pertaining to the computer programs, concepts, techniques, engineering, methodologies, tools, solutions, software and know-how that KDROC shall develop during the project's execution and such rights may not be used by the Customer following the expiry or termination of the relationship.

**11 INTELLECTUAL PROPERTY CLAIMS.** KDROC will defend or settle any claim against Customer that Products, delivered under these Terms, infringe (i) any patent, or (ii) any worldwide copyright or trademark, provided. Customer promptly notifies KDROC in writing, and cooperates with and provides control of the defence or settlement, to the extent legally permissible.

In the event of an infringement claim under this Section 12, KDROC will pay infringement claim defence costs, settlement amounts and court-awarded damages. If KDROC determines such a claim may occur, KDROC may, at its option, modify Product, procure any necessary license, or replace it. If KDROC determines none of these alternatives is reasonably available, KDROC will refund Customer's purchase price minus any credits that may have been applied upon return of the Product.

KDROC has no obligation for any claim of infringement arising from (i) KDROC's compliance with, or use of, Customer's designs, specifications or instructions or technical information; (ii) Product modifications by Customer or a third party; (iii) Product use prohibited by Specifications or related application notes; (iv) use or combination of the Product with products not supplied by KDROC; or (v) any infringement occurring after Customer has received notice of such suit or proceeding or other communication alleging the infringement unless KDROC has given written permission for such continuing infringement.

THIS SECTION 11 STATES KDROC'S ENTIRE LIABILITY FOR CLAIMS OF INTELLECTUAL PROPERTY INFRINGEMENT.

**12 LIMITATION OF REMEDIES AND LIABILITY.** NOTWITHSTANDING ANYTHING ELSE IN THESE TERMS, IN NO EVENT WILL KDROC, ITS SUBCONTRACTORS OR SUPPLIERS BE LIABLE FOR SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES (INCLUDING WITHOUT LIMITATION DOWNTIME COSTS, LOSS OF DATA, RESTORATION COSTS, LOST PROFITS, OR COST OF COVER) 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.

KDROC'S LIABILITY TO CUSTOMER IS LIMITED TO THE LESSER OF (I) THE AMOUNT ACTUALLY PAID BY CUSTOMER TO KDROC FOR THE PRODUCT THAT IS THE SUBJECT OF SUCH DAMAGES IN THE TWELVE (12) MONTHS PRIOR TO THE ACCRUAL OF SUCH DAMAGES, OR (II) US \$1,000,000.00.

THE LIMITATIONS SET FORTH IN THIS SECTION 12 WILL NOT APPLY TO INFRINGEMENT CLAIMS UNDER SECTION 11, AND CONFIDENTIALITY CLAIMS UNDER SECTION 13, OR TO DAMAGES FOR BODILY INJURY OR DEATH, OR TO DAMAGES CAUSED BY INTENT OR BASED ON PRODUCT LIABILITY LAW, OR WHEN APPLICABLE LAW DOES NOT ALLOW THE LIMITATION OF LIABILITY.

THE REMEDIES IN THESE TERMS ARE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES.

In some cases, Seller may promote certain Products for use in safety-related applications. Seller's goal is to educate customers so that they can design their own end-product solutions to meet applicable functional safety standards and requirements. Buyer makes the ultimate design decisions regarding its products and is solely responsible for compliance with all legal, regulatory, safety, and security related requirements concerning its products, regardless of any information or support that may be provided by Seller. Accordingly, Buyer will indemnify and hold Seller harmless from any claims, liabilities, damages and associated costs and



expenses (including attorneys' fees) that Seller may incur related to Buyer's incorporation of any Product in a safety-critical application or system.

Only those Products that Seller has specifically designated as "Automotive Qualified" are designed and intended for use in automotive and by no means in any other safety-related application or environment like military, space or aerospace. If Buyer uses any Product in a military, space or aerospace application or environment, Buyer does so at its own risk.

**13 CONFIDENTIALITY.** Customer may acquire knowledge of information relating to KDROC's business or Products ("KDROC Confidential Information") and agrees to keep such KDROC Confidential Information in confidence. Customer agrees not to use the KDROC Confidential Information except as permitted by KDROC in writing. Customer agrees not to copy, alter or directly or indirectly disclose any KDROC Confidential Information. Customer use the degree of care and means that it uses to protect its own information of like kind, but in no event less than reasonable care to prevent the disclosure or unauthorized use of KDROC Confidential Information. Customer may disclose KDROC Confidential Information, which is required to be disclosed pursuant to an enforceable requirement of a government agency or law so long as Customer provides prompt notice to KDROC of such requirement prior to disclosure. All KDROC Confidential Information is and shall remain the property of KDROC. Upon KDROC's written request, Customer shall return, transfer or assign to KDROC all KDROC Confidential Information and all copies thereof.

#### 14 GENERAL

**Bankruptcy:** If Customer becomes insolvent, is unable to pay its debts when due, files for bankruptcy, is the subject of involuntary bankruptcy, has a receiver appointed, or has its assets assigned, KDROC may cancel any unfulfilled obligations.

**Notices:** All notices required or permitted under these Terms will be in writing, and will be addressed to KDROC or to an authorized KDROC representative, and will be considered given when (i) delivered personally, (ii) sent by confirmed email, or otherwise as may be agreed in writing between the parties (iii) sent by commercial overnight courier with written verification receipt, or (iv) three (3) days after having been sent, postage prepaid, by first class or certified mail.

**Assignment:** The provisions of these Terms are for the benefit of the parties and not for the benefit of any third party. Customer's assignment of, these Terms, any order, or any rights arising there under without KDROC's written consent will be void and of no effect.

**Data Privacy:** KDROC will store and use any of the Customer's Personal Data in accordance with KDROC's privacy practices, which are available upon request. KDROC will not sell, rent or lease Customer's Personal Data to others. "Customer's Personal Data" means Customer's personal data or other personal data in KDROC's control, including but not limited to names, telephone numbers and e-mail addresses. Customer agrees that KDROC may forward Customer's Personal Data to other KDROC entities or business partners (including agents, resellers and subcontractors) solely to conduct business activities, including communication with third parties (such as the handling of orders, advertising campaigns or market research).

Customer agrees that KDROC and its entities may store and use Customer's Personal Data in all countries where KDROC and its entities do business. Customer represents and KDROC acknowledges Customer's representation that consent from individual data subjects has been obtained or is not needed.

**Legal Compliance:** Each party hereto represents that it is duly authorized to enter into these Terms and Conditions and represents that with respect to its performance hereunder, it will comply with all applicable federal, state and local laws, including, but not limited to those pertaining to U.S. Export Administration or the export or import controls or restrictions of other applicable jurisdictions.

If the delivery of Products under these Terms and Conditions is subject to the granting of an export or import license by a government and/or any governmental authority under any applicable law or regulation, or otherwise restricted or prohibited due to export or import control laws or regulations, Seller may suspend its obligations and Buyer's rights regarding such delivery until such license is granted or for the duration of such restriction and/or prohibition, respectively, and Seller may even terminate any Agreement related to such Products, without incurring any liability towards Buyer.

Furthermore, if an end-user statement is required, Seller shall inform Buyer immediately thereof and Buyer shall provide Seller with such document upon Seller's first written request; if an import license is required, Buyer shall inform Seller immediately thereof and Buyer shall provide Seller with such document as soon as it is available. By accepting Seller's Offer, entering into any Agreement and/or accepting any Products, Buyer agrees that it will not deal with the Products and/or documentation related thereto in violation of any applicable export or import control laws and regulations.

**Governing Law:** These Terms will be governed according to the laws of Spain. The courts of Madrid will have jurisdiction and venue for all controversies arising out of, or relating, to this Agreement, provided that Customer is a merchant; this will also be applicable to summary procedures where the plaintiff relies entirely on documentary evidence. Apart from this KDROC will be entitled to bring any claims before the court competent at Customer's permanent or temporary place of residence. The parties expressly waive the applicability of the United Nations Convention on Contracts for the International Sale of Goods and it will not apply to the terms and conditions of this Agreement.

**Waiver:** Neither party's failure nor delay to exercise any of its rights under these Terms will be deemed a waiver of forfeiture of those rights.

**Severability:** These Terms shall be applied to the extent permitted by applicable law. To the extent that any provision of these Terms is determined to be illegal or unenforceable, the remainder of these Terms will remain in full force and effect.

**Nuclear/Medical Uses:** KDROC's PRODUCTS ARE NOT SPECIFICALLY DESIGNED, MANUFACTURED OR AUTHORIZED FOR SALE AS PARTS, COMPONENTS OR ASSEMBLIES FOR THE PLANNING, CONSTRUCTION, MAINTENANCE OR DIRECT OPERATION OF A NUCLEAR FACILITY OR FOR USE IN MILITARY OR MEDICAL DEVICES OR APPLICATIONS. Customer is solely liable, and will indemnify and hold KDROC harmless for all loss, damage, expense or liability in connection with such use, if Products are used for these applications.

END OF TERMS