

**Supplementary Terms and Conditions of Purchase for Products Regarding Open Source Software  
of KEENFINITY GmbH ("Supplementary OSS Terms and Conditions of Purchase")**

**1. Scope**

a) These Supplementary OSS Terms and Conditions of Purchase of KEENFINITY GmbH and/or its affiliated companies in which KEENFINITY GmbH has the industrial lead (hereinafter collectively referred to as "**KEENFINITY**") shall apply in business transactions with companies with regard to the purchase/licensing of software, services and hardware, including updates of the supplier (as a stand-alone product or as part of a delivered software or hardware) ("**Contract Products**"). These Contract Products may also be integrated in, embedded in or used in combination with products manufactured or distributed by KEENFINITY (hereinafter collectively referred to as "**KEENFINITY Products**"). These Supplementary OSS Terms and Conditions of Purchase supplement in this respect the General Terms and Conditions of Purchase of KEENFINITY GmbH. These Supplementary OSS Terms and Conditions of Purchase shall also apply to software parts (patches, fixes) and new versions or updates of the above-mentioned software provided by the SUPPLIER under warranty or as part of software maintenance services.

This applies, for example, but not exclusively, to cases in which the SUPPLIER:

- provides OSS to KEENFINITY;
- licenses to KEENFINITY software and/or technology that contains OSS components;
- designs/develops software and/or technology for KEENFINITY that contains OSS components;
- sells/otherwise provides a hardware product to KEENFINITY that contains OSS components that
  - (1) are bundled with it, (2) are installed on it (e.g., are integrated into the firmware as part of the Product), or (3) are distributed separately but are intended for use with the hardware product;
- provides OSS components combined with services for KEENFINITY, partners or customers;
- provides the required OSS components for KEENFINITY to use/operate/create the contract product.

b) Our Supplementary OSS Terms and Conditions

of Purchase shall apply exclusively; we only accept general terms and conditions of the supplier which conflict with or deviate from our Supplementary OSS Terms and Conditions of Purchase to the extent that we have expressly agreed to them in writing. The acceptance of goods or services of the supplier or their payment does not constitute consent, even if the acceptance or payment is made in knowledge of conflicting or supplementary contractual terms and conditions of the supplier. Similarly, any previously agreed contractual terms of the Supplier that conflict with or supplement these Terms and Conditions of Purchase shall no longer be accepted.

## 2. Definitions

- a) "**Open Source Software**", "**Free and Open Source Software**", "**OSS**", "**FOSS**" or "**OSS Component**" shall mean software
- (1) under a license agreement that
    - conforms to the Open Source definition published by the Open Source Initiative (OSI) or the Free Software definition published by the Free Software Foundation (FSF);
    - permits the distribution or provision of access to the Software only if material or information (e.g. license texts, copyright/author notices, source code or written offer (= *written offer*) for it, makefiles, scripts, other software...) or links to material and/or information ("**Additional OSS Materials**") are provided or otherwise disclosed together with the Software ("**OSS License**"); or
  - (2) which is dedicated to Public Domain.
- b) "**Copyleft Terms**" means an OSS License that requires that modifications or derivative works of the OSS Component be licensed under such terms of such OSS License (e.g.: GPLv2).

## 3. Agreement on OSS, copyleft conditions, obligations of SUPPLIER

- a) **Information about OSS.** OSS which is or is to be included in the Contract Product supplied but

which has not been disclosed prior to conclusion of the contract shall be deemed not to have been accepted by KEENFINITY unless KEENFINITY has expressly accepted it. If the Contract Products contain (will contain) OSS, SUPPLIER shall inform KEENFINITY as early as possible about names and version numbers of OSS components and OSS licenses as well as any updates/changes. Any deviation from the agreed OSS components and/or OSS licenses in the Contract Products shall require the prior written consent of KEENFINITY, which KEENFINITY may not unreasonably withhold.

- b) **Legal/Licensing Obligations.** SUPPLIER shall comply with all obligations related to OSS (e.g. OSS licenses and copyright law) applicable to the Contract Products.
- c) **Agreement on certain types of licenses.** In addition, software licensed under
  - (1) GNU Affero General Public License (AGPL), Reciprocal Public License (RPL), Apple Public Source License (APSL), Open Source License (OSL), Common Public Attribution License (CPAL), Server Side Public License (SSPL), or any other license where providing the functionality or using the software or portions thereof as a service (e.g., SaaS, Application Service Providing [ASP], Managed Service Providing [MSP]) triggers the license obligations (e.g., providing the source code).
  - (2) any other OSS license with copyleft terms. may be only be part of the Contract Products if this has been expressly agreed between the parties in writing (incl. by fax, e-mail).
- d) **What to deliver.** SUPPLIER shall provide KEENFINITY with each delivery of the Contract Products, and additionally upon request from KEENFINITY, the following documentation and information in a common file format (which KEENFINITY may specify) for each development status, final status, and updates/upgrades of the Contract Products or their software (KEENFINITY may also request a document showing the differences between the last and the previous delivery):
  - (1) **List of included OSS** (preferredly in the format ISO/IEC 5962) for information of KEENFINITY:
    - (a) name and version number of the OSS component, (b) name and version number

of the OSS license (e.g., LGPLv2.1) or

indication of whether it is Public Domain, (c) the origin of the OSS component (e.g., URL/home page), (d) copyright notices and contents of the *notice file* (e.g. for the Apache license), (e) applicable license text/*permission note*, (f) indication whether the OSS component has been modified, (g) information about any copyleft conditions, (h) type of linkage (dynamic/static, for *dynamic-build* and *dynamic-deploy* systems: Description of all dependencies of the system at runtime).

Additional OSS Materials subject to the

(2) **Additional OSS Materials** to fulfill OSS licensing obligations:

- i. a **mandatory info document**, i.e. a file containing the file names of the OSS components, the respective license texts and copyright/author notes of each OSS component with meaningful headings and a table of contents at the beginning;
  - ii. if and to the extent required by the applicable OSS license: **Open Source Code Files** and instructions for building the source code into installable object code (including, for example, makefiles, scripts, *Complete Corresponding Source Code...*).
- e) **How to Deliver.** SUPPLIER shall provide all **Additional OSS Materials** together with the Contract Products (1) on a data carrier, (2) in an electronic mail, or (3) within the Contract Products as (a) digital files on the memory of the Contract Product (if accessible to User) or (b) in a program function for display (e.g. *menu item* or *about dialogue*). The method of providing the Additional OSS Materials shall be selected by
- SUPPLIER, if the Contract Product is not adapted to KEENFINITY specific needs (if KEENFINITY does not require a certain way).
  - KEENFINITY, if the contract product is adapted to KEENFINITY-specific requirements
- in a manner permitted by the applicable OSS Licenses, in particular, a link to download the Additional OSS Materials shall only be considered after separate approval by KEENFINITY. Even if an OSS License permits submission of a **written offer** instead of the Additional OSS Materials, SUPPLIER shall in any event provide with the

requirements of this section 3.e) (this document is the invitation to provide open source software code as offered).

- f) **Development Tools.** If the Contract Products are compilers or other software development tools ("**Development Tools**"), SUPPLIER shall ensure that the OSS terms of the Development Tools do not affect the software license of the development result or other output artifacts ("**Output Artifacts**") (e.g., it shall ensure an appropriate compilation process if the compiler is licensed under the GCC Runtime License). Furthermore, SUPPLIER shall inform KEENFINITY about OSS that may be injected into the Output Artifacts by the development tools ("**OSS Injections**"). In addition, SUPPLIER shall ensure that such Development Tools automatically provide any Additional OSS Materials relating to such OSS Injections together with the Output Artifacts in accordance with section 3.d).

#### **4. The OSS guarantees of the SUPPLIER**

SUPPLIER warrants that the information in the **list of included OSS** and the **Additional OSS Materials** is correct and complete, that the Contract Product does not contain/will not contain any OSS other than agreed with KEENFINITY and that any licenses of the OSS included in the Contract Product are compatible with each other. In addition, SUPPLIER warrants that a) the use of OSS in the Contract Products does not/will not result in KEENFINITY being required to license its own proprietary software under an OSS license and b) that restrictions preventing users from running modified versions of the OSS are not prohibited.

#### **5. OSS Remedy Obligations of the SUPPLIER.**

Without prejudice to any other rights of KEENFINITY, the following shall apply: If SUPPLIER breaches its obligations under section 3. or its warranties under section 4. the SUPPLIER shall be obliged to remedy within the agreed development and delivery dates and without undue delay after becoming aware thereof:

- a) to replace non-agreed OSS components with agreed software and to correct or supplement any incorrect or incomplete information in accordance with sections 3. and 4.;
- b) not to deliver any software that violates the

specifications of section 3. to KEENFINITY;

- c) to remedy all breaches of the guarantees set forth in section 4.

#### **6. OSS indemnity by the SUPPLIER**

Without prejudice to any other rights of KEENFINITY, SUPPLIER shall indemnify and/or reimburse KEENFINITY for all costs, expenses and damages arising from lack of/delay in performance (whether by act or omission) of:

- a) OSS licenses or requirements of copyright law in relation to the Contract Products or
- b) the obligations of SUPPLIER according to sections 3. , 4. and/or 5.