

Terms & Conditions

License, Maintenance and Support of PresetMaster Software

1. Definitions

For the purpose of these Terms and Conditions the following terms shall have the following meaning:

- 1.1. Agreement means the Order Form and these Terms and Conditions, including any schedule incorporated by reference in this agreement, establishing the rights and obligations in connection with the License granted and the Maintenance and Support Services provided by Keytown to Customer.
- 1.2. Confidential Information means any and all information and material of a party (the "Disclosing Party") which has or shall come into the possession, control or knowledge of the other party (the "Recipient Party") in connection with or as a result of entering into this Agreement including information concerning the Disclosing Party's past, present and future customers, suppliers, technology, and business. For the purposes of this definition, "information" and "material" includes, without limitation, know-how, data, patents, copyrights, trade secrets, processes, techniques, programs, designs, formulae, marketing, advertising, financial, commercial, sales or programming materials, written materials, compositions, drawings, diagrams, computer programs, studies, work in progress, visual demonstrations, ideas, concepts, business, financial and operational information and other data, in oral, written, graphic, electronic, or any other form or medium whatsoever.
- 1.3. Customer means the customer indicated in the Order Form.
- 1.4. Keytown means [INVOEGEN ENTITEIT] a private company with limited liability incorporated under the laws of the Netherlands, having its principle place of business at [INVOEGEN ADRES], registered with the Dutch Chamber of Commerce under number [INVOEGEN NUMMER].
- 1.5. License means the right to use the Software set forth in clause 3.
- 1.6. License Fee means such sums stipulated in the Order Form as are or were payable by Customer to Keytown in connection to the License.
- 1.7. Maintenance and Support Services means the maintenance and support services of the Software provided or to be provided by Keytown to Customer set forth in clause 5.
- 1.8. Major Update means a new version of the Software covering added devices and significant changes in the Software.
- 1.9. Medium Update means a new version of the Software covering minor changes in the device functions and general functionality updates of the Software itself.
- 1.10. Minor Update means a new version of the Software covering necessary changes, such as small patches, security updates and bugfixes.
- 1.11. Order Form means any order concluded between Keytown and Customer for provision of the License and Maintenance and Support Services, placed electronically or through other means.
- 1.12. Response Time means the total amount of time between the request for service and the initial response including a confirmation of receipt by Keytown.
- 1.13. Software means the PresetMaster software computer program developed by Keytown and licensed by Keytown to Customer in consideration of the License Fee.

2. General

- 2.1. These Terms and Conditions apply to all contractual relationships between Customer and Keytown and are part of all Agreements.
- 2.2. Any offer of Keytown is subject to change and is non-binding. An Agreement is concluded between Keytown and Customer only when Customer places an order via the Order Form, Keytown confirms this order in writing and Keytown has received the License Fee in full.
- 2.3. The application of general terms and conditions or any other terms Customer refers to in its request for information/quote, its order and/or any communication related to the provision of the License or Maintenance and Support Services is expressly excluded.
- 2.4. This Agreement contains the entire agreement between parties with respect to the provision of the License and Maintenance and Support Services and supersedes all previous agreements and understanding between parties with respect thereto. Amendments to this Agreement shall only be valid if agreed by both parties in writing.

3. Grant and Scope of License

- 3.1. In consideration of the License Fee, Keytown grants Customer a non-exclusive, non-transferable, perpetual licence to use the Software, as may be updated in accordance with clause 5.2, subject to the terms and conditions of this Agreement.
- 3.2. Customer may:
 - (a) install and use the Software, for its internal business purposes and only for the number of devices indicated in the Order Form, by persons employed by Customer or engaged by Customer for Customer's internal business purposes; and
 - (b) make up to two (2) copies of the Software for back-up purposes only, provided that this is necessary for the activities permitted by this Licence, except for the free demo version of the Software which is not restricted in the number of copies.
- 3.3. Except as expressly set out in this Agreement or as permitted by any applicable mandatory local laws, Customer undertakes:
 - (a) not to copy the Software except where such copying is incidental to normal and permitted use of the Software;
 - (b) not to rent, lease, sub-license, loan, translate, merge, adapt, vary or modify the Software ;
 - (c) not to make alterations to, or modifications of, the whole or any part of the Software;
 - (d) not to disassemble, de-compile, reverse engineer or create derivative works based on the whole or any part of the Software nor attempt to do any such things except to the extent Customer is permitted to do so by applicable mandatory laws (and where Customer is so permitted, Customer shall in any event only use the information obtained by Customer during such activities to the extent permitted by law and shall not disclose or communicate it to any third party to whom it is not necessary to disclose or communicate it, and shall not use it to create any software which is substantially similar to the Software);

- (e) to keep confidential the licence key or activation code that is made available to Customer in relation to the Software;
 - (f) not to obscure, modify, remove or otherwise tamper with any copyright or trademark notices included in or on the Software;
 - (g) to only use the Software in the manner it was intended to use and in compliance with the instructions for use set out in the webpage of Keytown;
 - (h) to ensure that the Software is used by Customer's employees and representatives in accordance with the terms of this Agreement; and
 - (i) not to provide, or otherwise make available, the Software in any form, in whole or in part (including, but not limited to, program listings, object and source program listings, object code and source code) to any person other than authorised users without Keytown's prior written consent.
- 3.4. Customer shall not use the Software for other purposes and tasks, except for those expressly specified in this clause 3. If Customer violates this restricted use provision, Customer shall be liable for damages suffered by Keytown and Keytown is entitled to terminate this Agreement in accordance with clause 12, all without prejudice to any other rights or remedies Keytown may have under the law and this Agreement.

4. Delivery

- 4.1. Keytown shall deliver the Software (solely in English) through purely electronic communication
- 4.2. Keytown will provide the licence key or activation code that Customer needs to activate and use the Software after full payment of the License Fee. Keytown remains the right to disable the licence key or activation code if Keytown suspects fraud or misuse of the licence key or activation code.
- 4.3. Any time or date for delivery of the Software and licence key or activation code provided by Keytown is given in good faith but is an estimate only. Keytown will notify the Customer of any expected delay in delivery.

5. Maintenance and Support Services

- 5.1. In consideration of the Licence Fee and dependent on the level of support indicated in the Order Form, Keytown offers the following Maintenance and Support Services, per e-mail only and in exceptional circumstances per phone ("we call you" approach):
- (a) Keytown shall maintain a support helpdesk that will respond to Customer within a Response Time of two (2) business days regarding only Lifetime versions of the PresetMaster software related and other questions;
 - (b) Keytown shall maintain a support helpdesk that will respond to Customer within a Response Time of five (5) business days regarding all other PresetMaster software version related questions; or
 - (c) Keytown shall maintain a support helpdesk that will respond to general questions to Customer within a Response Time of ten (10) business days regarding the PresetMaster software (regardless of the version).
- 5.2. In consideration of the License Fee and dependent on the type of license indicated in the Order Form, Keytown will provide Customer with information about new features introduced in new versions of the Software. Customers that purchased:
- (a) Lifetime License are entitled to use any new versions of the Software, including Major Updates, Medium Updates and Minor Updates, as are issued by Keytown from time to time (on the same terms as set out in this Agreement in respect of the Software being supplemented or updated); or
 - (b) a Version License Key are entitled to use new versions of the Software as a result of Minor Updates, as are issued by Keytown from time to time (on the same terms as set out in this Agreement in respect of the Software being supplemented or updated).

For the avoidance of doubt, Customer is not entitled to any onsite Maintenance and Support Services or advice regarding the operation of the Software. Hardware related support does not fall within the scope of the Maintenance and Support Services offered by Keytown.

- 5.3. Customer is not entitled to Maintenance and Support Service for the free demo version of the Software. To obtain full functionality of the Software, Customer has to pay the License Fee, upon which customer receives a licence key or activation code.
- 5.4. This Agreement will govern any updates and upgrades of the Software that Keytown may provide to Customer and which replaces and or supplements the Software, unless such upgraded or updated Software is accompanied by a separate agreement, in which case that agreement applies.
- 5.5. Keytown shall attempt to resolve "reproducible" bugs in the Software ("reproducible" means that Keytown can reproduce the bug when required by following the same steps that caused it to occur, as opposed to bugs which occur randomly, which are not regarded as "reproducible").
- 5.6. Customer may purchase Major Updates, Medium Updates and/or Minor Updates for a reduced additional fee, if the type of license indicated in the Order Form does not cover the desired update.
- 5.7. The Support and Maintenance Services for the Version License Key will be provided for six (6) months and starts at the delivery date of the Software to Customer. Keytown provides Maintenance and Support Services for the Lifetime Version upon the delivery of the Software to Customer for the duration of this Agreement, under the condition that Customer has installed the latest version, including all Major Updates, of the Software.
- 5.8. Keytown is entitled, without prejudice to any other rights or remedies, to suspend its support and maintenance obligations for any period for which Customer fails to pay the License Fees in compliance with the terms and conditions in this Agreement.

6. Fees and Payment

- 6.1. In consideration of the grant of the License and the provision of Maintenance and Support Services, Customer shall pay to Keytown the License Fee as indicated in the Order Form.
- 6.2. All fees are payable up front, prior to the delivery of the licence key or activation code by Keytown. All amounts due shall be paid in full without any deduction, abatement, set off or withholding of any kind by Customer.
- 6.3. If Customer fails to pay the fees in accordance with the terms of this clause 6, Keytown may, at its sole discretion, suspend the delivery of the Software and/or the Maintenance and Support Services until the overdue amounts have been paid in full. The rights granted in this clause 6 are in addition and without prejudice to any other rights Keytown may have under the law and this Agreement.
- 6.4. The fees as set out in this clause 6 are exclusive of all taxes. Customer shall pay all taxes arising in respect of the delivery of the Software, the grant of the License and/or the provision of the Maintenance and Support Services for which a customer would usually be responsible subject to the applicable tax legislation.

7. Intellectual Property

- 7.1. Customer acknowledges that all intellectual property rights in the Software throughout the world belong to Keytown, that rights in the Software are licensed to Customer by Keytown, and that Customer has no rights in, or to, the Software other than the right to use them in accordance with the terms of this Agreement. For the avoidance of doubt, the Software is licensed and not sold. Nothing in this Agreement constitutes a transfer of ownership of the intellectual property rights.
- 7.2. Customer acknowledges that it has no right to have access to the Software in source code form or in unlocked coding or with comments.
- 7.3. Customer agrees that it shall not (by itself or through any agent) modify, vary, enhance, copy, sell, lease, licence, sub-licence or otherwise deal with the Software or any part or parts or copies thereof, or have any software or other program written or developed for it based on the Software or any confidential information supplied to Customer by Keytown.

8. Indemnification

- 8.1. In the event that any claim is made against Customer for infringement of intellectual property rights arising directly from the use of the Software by Customer, Keytown will, at its own expense, conduct and/or supervise any ensuing litigation and all negotiations for a settlement of the claim. Keytown will bear the costs of any payment, either by way of a lump sum or a continuing royalty payment, to be made in settlement or as a result of an award in a judgment against Customer in the event of litigation. This indemnification does not apply to any change to the Software made by the Customer, including but not limited to images or other content added by Customer to the Software.
- 8.2. The benefit of clause 8.1 is granted to Customer by Keytown only in the event that Customer (i) will give Keytown the earliest possible notice in writing of any such claim being made or action threatened or brought against it, (ii) will make no admission of liability or take any other action in connection therewith, (iii) will permit Keytown to handle the claim pursuant to clause 8.1, (iv) will, at Keytown's expense to the extent reasonable, give all reasonable information, cooperation and assistance to Keytown in relation to the handling of the claim, (v) has not made any changes to the Software (either itself or by any other third party) without prior written permission of Keytown, and (vi) uses the Software in accordance with the terms and conditions of this Agreement.

9. Confidentiality

- 9.1. Each party shall at all times, both during the term of this Agreement and thereafter, keep and hold all Confidential Information of the other party in the strictest confidence, and shall not use such Confidential Information for any purpose, other than as may be reasonably necessary for the performance of its duties pursuant to this Agreement, without the other party's prior written consent.
- 9.2. Each party agrees:
 - (a) that it will not disclose to any third party or use any Confidential Information disclosed to it by the other except as expressly permitted in this Agreement; and
 - (b) that it will take all reasonable measures to maintain the Confidentiality of all Confidential Information of the other party in its possession or control, which will in no event be less than the measures it uses to maintain the Confidentiality of its own information of similar importance.
- 9.3. Notwithstanding the foregoing, each party may disclose Confidential Information:
 - (a) to the extent such disclosure is required by a court of competent jurisdiction or other governmental authority or otherwise as required by law, being understood that in such case the party concerned must, to the extent legally permitted, inform the other party promptly, and if possible in advance of such legal requirement for disclosure; or
 - (b) on a "need-to-know" basis under an obligation of Confidentiality to its authorized agents, contractors, legal counsel, accountants, banks and other financing sources and their advisors.
- 9.4. Customer guarantees that the obligations relating to confidentiality set out in this clause 9 shall be imposed on its personnel, advisors and any sub-contractors and that it will be entirely responsible in the event that its personnel, advisors or sub-contractors should breach these obligations.

10. Liability

- 10.1. Keytown shall not be liable to Customer for any loss or damage whatsoever or howsoever caused arising directly or indirectly in connection with this Agreement, including but not limited to delivery and use of the Software, the Maintenance and Support Services, or otherwise, except to the extent that such liability may not be lawfully excluded.
- 10.2. Notwithstanding the generality of clause 10.1 above, Keytown expressly excludes liability for any (i) indirect, special, incidental or consequential loss or damage; and/or (ii) for loss of profit, business, revenue, goodwill or anticipated savings which may arise in respect of the Software, its possession or use, the computer system on which the Software is installed and/or run, or in respect of other equipment or property.
- 10.3. In the event that any exclusion or other provision contained in this Agreement shall be held to be invalid for any reason, such liability shall be limited in any case to the Licence Fee.
- 10.4. Keytown does not exclude liability for fraudulent misrepresentation nor for death or personal injury (but only to the extent that the same arises as a result of the negligence of us, our employees, agents or authorised representatives).
- 10.5. This Agreement sets out the full extent of Keytown's obligations and liabilities in respect of the grant of the license to the Software and the provision of the Maintenance and Support Services. In particular, there are no conditions, warranties, representations or other terms, express or implied, that are binding on Keytown except as specifically stated in this Agreement. Any condition, warranty, representation or other term concerning the supply of the Software or the Maintenance and Support Services which might otherwise be implied into, or incorporated in, this Agreement, or any collateral contract, whether by statute, common law or otherwise, is hereby excluded to the fullest extent permitted by law.
- 10.6. Customer acknowledges that the Software has not been developed to meet Customer's individual requirements and is provided "as is" and that it is therefore Customer's responsibility to ensure that the facilities and functions of the Software as described on the webpage of Keytown meet Customer's requirements. Customer acknowledges that the Software may not be entirely free of bugs or errors and that the limitations contained in this clause are reasonable in the light of all the circumstances.

11. Audit

- 11.1. Keytown has a right to verify compliance of this Agreement by Customer, including but not limited to the use of the Software in accordance with clause 3, through an independent third party audit during the term of this Agreement and a period of six (6) months thereafter.

- 11.2. Customer will fully cooperate with an audit and shall provide access to all required information as part thereof. The cost of the third party auditor shall be borne by Keytown unless the audit shows that this Agreement has not been complied with.

12. Term and Termination

- 12.1. Either party may terminate this Agreement, in whole or in part, effective immediately, by written notice, if (a) the other party has failed to perform a material contractual obligation and such breach is incapable of being cured; (b) the other party has failed to perform a material contractual obligation a breach of which is capable of being cured, but the party in breach fails to remedy such breach within thirty (30) days of prior written notice requiring them to do so; or (c) if the other party is subject to an actual or threatened event where the other party has ceased to exist or has been dissolved, the other party's business has been discontinued or the other party has been declared bankrupt or has been granted suspension of payments.
- 12.2. For purposes of this clause 12.2, any breach of clause 3 (Grant and Scope of License), 7 (Intellectual Property) and 9 (Confidentiality) will, without limitation, be deemed to be a material breach that is incapable of cure.
- 12.3. Keytown may terminate the provision of Maintenance and Support Services under this Agreement in the event Keytown ceases to exist, will be dissolved or the business discontinues, by giving the other Party at least six (6) months prior notice in writing of termination or at any time with at least one (1) year prior written notice to Customer. Customer will not be liable vis-à-vis Keytown for such termination. Upon termination for any reason:
- (a) all rights granted to Customer under this Agreement shall cease and, therefore, Customer must immediately cease the use of the Software;
 - (b) Customer immediately deletes or removes the Software from all computer equipment in its possession and immediately destroy or return to Keytown, at its option, all copies of the Software then in Customer's possession, custody or control and, in the case of destruction, certify to Keytown that Customer has done so;
 - (c) Keytown shall cease the provision of all Maintenance and Support Services to Customer without having to refund any fee paid in relation to such services or otherwise being liable for the discontinuation, and
 - (d) Each Party will immediately return to the other Party, or at the other Party's request, destroy all Confidential Information of the other Party.
- 12.4. Termination of this Agreement shall not affect any rights or liabilities of either party accrued until the date of termination. Termination of this Agreement shall not affect any License Fee received by Keytown.
- 12.5. Termination will not affect any clauses which by nature are intended to survive termination, including but not limited to clause 7 (Intellectual Property Rights), clause 9 (Confidentiality), clause 10 (Limitation of liability), and clause 14 (Governing Law and Jurisdiction).

13. Transfer of rights and obligations

- 13.1. Customer may not transfer, assign, charge or otherwise dispose of the License, or any of its rights or obligations arising under this Agreement, including but not limited to the Maintenance and Support Services, without prior written consent of Keytown.
- 13.2. Keytown may transfer, assign, charge, sub-contract or otherwise dispose of the License, or any of its rights or obligations arising under this Agreement, including but not limited to the Maintenance and Support Services, and any of its rights in and to the Software.
- 13.3. Keytown may make use of third parties for the implementation and execution of this Agreement without prior permission of the Customer.

14. Governing law and jurisdiction

- 14.1. This Agreement shall be governed by Dutch law. The Convention on the International Sale of Goods (Vienna 1980) shall not apply.
- 14.2. Any dispute arising between the parties in relation to this Agreement shall be exclusively submitted to the competent court in Amsterdam, The Netherlands.

15. Miscellaneous

- 15.1. If a party fails to insist on strict performance of any of the other party's obligations under this Agreement, or if a party fails to exercise any of the rights or remedies to which it is entitled under this Agreement, this shall not constitute a waiver of such rights or remedies and shall not relieve the other party from compliance with such obligations.
- 15.2. No waiver by Keytown of any of the terms and conditions in this Agreement shall be effective unless it is expressly stated to be a waiver and is communicated to Customer in writing.
- 15.3. Any provision of this Agreement, which is invalid or unenforceable, will be severed from this Agreement, all without affecting the remaining provisions of this Agreement. In that event, the parties will negotiate in good faith such changes to this Agreement as will best preserve for the parties the benefits and obligations of such invalid or unenforceable portion.
- 15.4. Parties acknowledge that, in entering into this Agreement, neither has relied on any representation, undertaking or promise given by the other or implied from anything said or written in negotiations between the parties before entering into the Agreement except as expressly stated in this Agreement.