

# General Terms and Conditions EKF Elektronik GmbH

## § 1 Scope of Application

- (1) Deliveries and services of all kinds provided by EKF (EKF Elektronik GmbH, Philipp-Reis-Straße 4, 59065 Hamm, Germany) as service provider to its clients (hereinafter referred to as "Customers") shall be based on these General Terms and Conditions. Unless otherwise agreed, they shall apply to all existing and future similar business relations between EKF and its customers, even if they are not expressly included again.
- (2) EKF shall conclude contracts as service provider exclusively with entrepreneurs, merchants within the meaning of the German Commercial Code, legal entities under public law or special funds under public law. An entrepreneur shall be a natural or legal person or a partnership with legal capacity who, when concluding a legal transaction, acts in the exercise of his commercial or independent professional activity. A partnership with legal capacity is a partnership endowed with the capacity to acquire rights and incur liabilities.
- (3) These General Terms and Conditions shall apply exclusively. The validity of conflicting terms and conditions or terms and conditions deviating from these provisions shall require written agreement. Deviating terms and conditions of the customer shall not be recognized unless EKF expressly agrees to their validity, at least in text form. General Terms and Conditions deviating from the present General Terms and Conditions shall not become part of the contract, even by acceptance of the order by EKF, and in particular not if EKF acts for the customer with knowledge of the customer's General Terms and Conditions.
- (4) The present General Terms and Conditions shall apply only insofar as no provisions deviating from them have been made within the framework of individual agreements. Insofar as regulations contradict each other, the more specific regulations shall take precedence.
- (5) References to the applicability of statutory provisions shall only have a clarifying meaning. Even without such clarification, the statutory provisions shall therefore apply

unless they are directly amended or expressly excluded in these General Terms and Conditions.

## **§ 2 General Information**

- (1) The General Terms and Conditions provide information on how the EKF offer can be used and which regulations apply to it. Oral agreements made before or at the time of conclusion of the contract shall at least require text form (§ 126b of the German “Bürgerliches Gesetzbuch”, BGB) to be effective. Agreements made after conclusion of the contract shall only be valid if they have been agreed at least in text form.
- (2) If the website of EKF is visited, the privacy policy of EKF ([Datenschutz – EKF \(dev-ekf.com\)](#)) shall apply in addition.

## **§ 3 Description of Services**

- (1) The object of EKF's Services shall be the development, manufacture and distribution of electronic devices, microcomputers and software. EKF shall offer customers software as well as the required hardware for purchase. The service to be provided by EKF as agreed with the customer shall be defined in the respective individual service description underlying the contractual relationship with the customer.
- (2) The product descriptions contained on the website shall not constitute any warranty or guarantee.

## **§ 4 Prices and payment methods**

- (1) The prices agreed with the customer in the order process shall apply. Unless otherwise stated in the product description of EKF, the prices stated shall be net prices in Euro plus statutory value added tax. Any additional shipping and delivery costs shall be stated separately in the offer.
- (2) In the case of deliveries to countries outside Germany, additional costs may be incurred in individual cases for which EKF is not responsible and which shall be borne by the customer. These include, for example, costs for the transfer of funds by credit

institutions (e.g. transfer fees, exchange rate fees) or import duties or taxes (e.g. customs duties).

- (3) Unless otherwise agreed with the Customer, the purchase price shall be due for payment to the Customer as of the date of invoice.
- (4) Payment for purchased services shall be made by bank transfer by the customer to EKF. If payment against invoice is offered, EKF reserves the right to carry out a credit check in individual cases. Payment shall be deemed to have been made only when EKF can dispose of the payment amount.

#### **§ 5 Conclusion of contract with the customer**

- (1) The presentation and advertising of the services by EKF shall not constitute a binding offer by EKF. If the customer is interested in the services of the supplier, he shall have the opportunity to contact EKF. Only the order of the customer shall constitute a legally binding offer to conclude a contract which EKF may accept. EKF shall be entitled to accept this offer of contract within 2 weeks after its receipt.
- (2) EKF may accept the offer of the customer within two weeks,
  - by sending the customer a written order confirmation or an order confirmation in text form (fax or e-mail), in which case the time of submission of the declaration shall be decisive,
  - by making the ordered goods available to the customer, in which case the date of receipt of the goods/the download of the goods by the customer shall be decisive, or
  - by requesting payment from the customer.
- (3) If several of the aforementioned alternatives exist, the contract shall be concluded at the point in time at which one of the aforementioned alternatives occurs first. The period for acceptance of the offer shall commence on the day following dispatch of the offer by the customer and shall end at the end of the fourteenth day following dispatch of the offer.

- (4) EKF shall confirm receipt of the order placed by the customer in individual cases without delay by e-mail or by telephone. This shall not constitute a binding acceptance of the order unless, in addition to the confirmation of receipt, the acceptance is declared at the same time.
- (5) If EKF submits an offer to the customer, such offer shall be revocable at any time until the conclusion of the contract (acceptance by the customer). EKF's offers shall be subject to change and non-binding unless they are expressly marked as binding or contain a specific acceptance period. If the customer accepts the offer, the contract shall be concluded with the content objectively apparent from the offer.
- (6) If the delivery of the goods ordered by the customer is not possible, for example due to lack of availability of individual parts for production, EKF shall not accept the contract offer. In this case a contract shall not be concluded. EKF shall inform the customer thereof and refund any consideration already received.
- (7) Any collateral agreements or amendments to a concluded contract shall be valid at least in text form.
- (8) If unforeseeable events significantly change the economic significance or the content of the delivery or service or have a significant effect on the operation of EKF, the contract shall be adapted appropriately to the extent this is in good faith. If this is not economically justifiable, EKF shall be entitled to withdraw from the contract.

#### **§ 6 Right of Cancellation**

If a contract for the purchase of goods has been concluded, revocation of the contract shall be excluded.

#### **§ 7 Place of performance**

Unless otherwise agreed, the place of performance shall be the registered office of EKF. The risk shall pass to the customer upon dispatch of the goods.

## **§ 8 Terms of Delivery**

- (1) EKF shall be entitled to make partial deliveries, provided this is reasonable for the Customer. Should a shipment be made in several partial deliveries, the shipping costs shall be charged only once.
- (2) The delivery period shall be agreed individually or stated by EKF upon acceptance of the order. Unless expressly agreed between the parties, the delivery periods shall not be fixed dates in the sense of a fixed date pursuant to § 376 of the German “Handelsgesetzbuch” (Commercial Code, HGB), unless EKF has expressly designated them as such.
- (3) If EKF is unable to meet binding delivery dates for reasons for which EKF is not responsible (e. g. failure to receive all documents to be supplied by the purchaser in due time), the customer shall be informed thereof without delay and at the same time notified of the expected new delivery date. If performance is also not possible within the new delivery period, EKF shall be entitled to withdraw from the contract in whole or in part; any consideration already paid by the customer shall be refunded without delay. EKF shall be released from its delivery obligation if and as long as EKF or the supplier are prevented from delivery by force majeure, strike or lockout, laws or administrative orders or any other circumstance for which EKF is not responsible.
- (4) If a delivery date agreed in writing by EKF is exceeded, the customer shall have the right to withdraw from the contract by declaration in text form or to claim damages in lieu of performance in the event of fruitless expiry of a reasonable deadline set by EKF. In any case, however, a request in text form setting a time limit by the customer shall be required.
- (5) As a rule EKF shall take out goods transport insurance for the consignment at the expense of the customer. If the contractor does not wish to take out transport insurance, it must notify EKF of this at least in text form in good time before delivery.

### **§ 9 Default of payment and set-off**

- (1) Unless otherwise agreed, payment shall be due from the date of invoice to the customer. In the event of default in payment, EKF shall be entitled to charge default interest to the customer in the amount of 9 percentage points above the base interest rate p.a. as published by the European Central Bank. In the event that EKF has demonstrably incurred higher damage due to default, EKF shall be entitled to claim such damage. Conversely, the customer shall be entitled to prove that EKF has suffered no damage or only significantly lower damage as a result of the delay in payment.
- (2) Payments made by the customer shall be credited in the order of repayment determined by EKF if the payment made is not sufficient to repay all monetary debts of the customer arising from the mutual business relationship. A performance provision of the customer pursuant to Section 366 para. 1 BGB shall be ineffective in this respect.
- (3) The assignment of a claim against EKF shall require our prior consent in text form to be effective.
- (4) The customer shall not be entitled to offset against our claims unless its counterclaims have been legally established or are undisputed. In the event of defects in delivery, the customer's counter rights shall remain unaffected.
- (5) EKF shall be entitled to set off claims of the customer against claims due and owing to EKF.

### **§ 10 Default of acceptance by the customer**

- (1) The customer shall be obliged to accept the goods on the agreed acceptance date. In the case of goods ordered on call, the acceptance date shall be the latest agreed call date.
- (2) If the customer is in default of acceptance, fails to cooperate or if EKF's delivery is delayed for other reasons for which the customer is responsible, EKF shall be entitled to claim compensation for the resulting damage including additional expenses, e.g. for storage costs. In this case, a lump-sum compensation in the amount of EUR 50.00 per

calendar day shall be charged, starting with the delivery deadline or - in the absence of a delivery deadline - with the notification that the goods are ready for dispatch.

- (3) The proof of a higher damage and further legal claims shall remain unaffected; however, the lump sum shall be credited against further monetary claims. The customer shall be entitled to prove that EKF has suffered no damage at all or only significantly less damage than the above lump sum.

### **§ 11 Copyright and rights of use**

- (1) All digital contents provided by EKF are protected by copyright. The customer acquiring such contents undertakes to acknowledge and comply with such copyrights. The customer shall acquire from EKF the non-exclusive, non-transferable, personal and unlimited right to use the digital contents. Any further use, in particular commercial use, further distribution to third parties, publication, making available on the Intranet or Internet against payment or free of charge shall be prohibited.
- (2) All rights to the documents such as drawings, layouts, parts lists, circuit diagrams, etc. including software shall remain exclusively with EKF Elektronik GmbH Hamm or the manufacturer, even if they have been prepared on behalf of the customer, unless otherwise agreed.

### **§ 12 Transfer of Rights of Use and Retention of Title**

- (1) The rights of use to the digital contents not located on physical data carriers as described in § 10 shall not pass to the customer until full payment has been received by EKF.
- (2) EKF shall retain title to the goods sold until full payment of all present and future claims of EKF under the purchase contract and an ongoing business relationship (secured claims).
- (3) The goods subject to retention of title may neither be pledged to third parties nor assigned as security before full payment of the secured claims. The customer shall notify EKF in writing without delay if an application is made to open insolvency proceedings or if third parties (e.g. attachments) seize the goods belonging to EKF.

- (4) Until revoked, the customer shall be entitled to resell and/or process the goods subject to retention of title in the ordinary course of business. In this case the following provisions shall apply in addition.
- a. The retention of title shall extend to the products resulting from processing, mixing or combining of our goods at their full value, EKF being deemed to be the manufacturer. If, in the event of processing, mixing or combining with goods of third parties, their right of ownership remains, EKF shall acquire co-ownership in proportion to the invoice values of the processed, mixed or combined goods. In all other respects the same shall apply to the resulting product as to the goods delivered under retention of title.
  - b. The customer hereby assigns to EKF as security any claims against third parties arising from the resale of the goods or the product in total or in the amount of our co-ownership share, if any, in accordance with the preceding paragraph. EKF accepts the assignment.
  - c. The customer shall remain authorized to collect the claim in addition to EKF. EKF undertakes not to collect the claim as long as the customer meets its payment obligations towards EKF. However, if this is not the case, EKF may demand that the customer inform EKF of the assigned claims and their debtors, provide all information required for collection, hand over the relevant documents and inform the debtors (third parties) of the assignment. Furthermore, in such case EKF shall be entitled to revoke the customer's authority to further sell and process the goods subject to retention of title.

### **§ 13 Warranty**

- (1) If the purchased goods are defective, the statutory provisions on liability for defects shall apply unless otherwise provided below.
- (2) EKF shall in principle not be liable for defects of which the customer is aware at the time of conclusion of the contract or is not aware due to gross negligence (§ 442 German BGB). Furthermore, the customer's claims for defects shall be subject to the condition that the customer has complied with its statutory duties of inspection and



notification (§§ 377, 381 German HGB). The customer shall inspect the goods for obvious defects immediately after delivery and, if a defect becomes apparent, shall inform EKF without delay. EKF shall be notified in writing by the customer of any hidden defects immediately upon discovery. Shortages and wrong deliveries shall not be considered as hidden defects.

- (3) If a defect becomes apparent upon delivery, inspection or at any later time, EKF shall be notified thereof in writing without delay. In any case, obvious defects shall be notified in text form within 2 working days from delivery and defects not apparent upon inspection within the same period from discovery. If the customer fails to make proper inspection and/or notification of defects, EKF's liability for the defect not notified or not notified in time or not notified properly shall be excluded in accordance with the statutory provisions.
- (4) If the goods are defective at the time of passing of risk, the customer shall initially only be entitled to demand from EKF delivery of goods free of defects by way of subsequent performance. The transport and other costs incurred in connection with the subsequent performance shall be borne by EKF.

#### **§ 14 Liability**

- (1) Claims of the customer for damages shall be excluded. Excluded herefrom shall be claims for damages by the customer arising from injury to life, body or health or from breach of material contractual obligations as well as liability for other damages based on intentional or grossly negligent breach of duty by EKF, its legal representatives or vicarious agents. Material contractual obligations are those whose performance is necessary to achieve the objective of the contract. In the event of a breach of material contractual obligations, EKF shall only be liable for the foreseeable damage typical for the contract if such damage was caused by simple negligence, unless the customer's claims for damages are based on injury to life, body or health. Liability under the German Product Liability Act shall remain unaffected by these General Terms and Conditions.

- (2) The above exclusions or limitations of liability shall also apply to the benefit of employees, vicarious agents and other third parties used by EKF for the performance of the contract.

### **§ 15 Statute of Limitations**

Claims of the customers against EKF shall become statute-barred one year after knowledge, but at the latest three years after performance of the service. This shall not apply in case of fraudulent intent, warranty promises, intent and gross negligence and not in case of injury to life, body or health and not in case of mandatory liability such as under the Product Liability Act.

### **§ 16 Confidentiality and Data Protection**

- (1) EKF and the customer undertake to treat all information received within the framework of the contractual relationship as confidential and not to make such information available to third parties. Excluded from the obligation of confidentiality shall be information which is
- a. was already generally known at the time of the conclusion of the contract or subsequently becomes generally known without any breach of the confidentiality obligations contained in this contract;
  - b. which the Recipient has developed independently of this Agreement; or
  - c. received by the Recipient from a third party or outside of this Agreement from the disclosing party without an obligation of confidentiality.

The burden of proving the existence of the exceptions set forth in this paragraph shall be on the party relying on the exception.

- (2) All available data shall be treated confidentially and in accordance with the data protection regulations. The customer's order data shall be stored at EKF within the scope of the statutory provisions. The legal basis is Art. 6 para. 1 b) of the General Data Protection Regulation, GDPR. The personal data provided by the customer will be

stored and used exclusively to provide the service ordered. Further data protection information can be found in the data protection declaration at

[Datenschutz – EKF \(dev-ekf.com\)](https://dev-ekf.com/Datenschutz)

can be found.

In the event that EKF should process personal data on behalf of the customer, the parties already agree to conclude a supplementary agreement within the meaning of Art. 28 GDPR.

### **§ 17 Final Provisions**

- (1) The General Terms and Conditions as well as all contracts of EKF, including the form of their conclusion as well as all rights and obligations arising therefrom, shall be governed by German law. This shall also apply to all non-contractual claims in connection with these contracts.
- (2) Any disputes arising out of or in connection with these contracts (including those concerning their validity) shall be subject to the exclusive jurisdiction of the courts of the City of Hamm, Germany in the first instance. However, EKF shall also be entitled to bring an action at the general place of jurisdiction of the customer. This agreement on the place of jurisdiction shall not apply if another exclusive place of jurisdiction is mandatory.
- (3) EKF reserves the right to amend these General Terms and Conditions of Business without stating reasons, insofar as this is necessary due to changes in the performance of its offers or due to legal changes or as a result of technical developments.
- (4) Amendments to the General Terms and Conditions shall be sent to the customers by e-mail. If no objection is raised within six weeks, the amendments shall be deemed accepted. In the event of an objection to the amendment, EKF may deny the customer further use of the offers affected by the amendments.
- (5) Should one or more provisions of these GTC be or become invalid or unenforceable, the validity of the remaining provisions shall not be affected thereby. In place of invalid

or unenforceable provisions, the parties shall agree on a valid or enforceable provision that comes closest to the economic interests of both parties. The same shall apply in the event that the General Terms and Conditions contain an unintended gap.

