

## Terms of Business (ToB)

of ekey biometric systems GmbH "ekey"

Dated 07/03/2023

**These Terms of Business (ToB) are valid solely for consumer transactions.**

### 1. General

All deliveries and services by "ekey" shall be performed exclusively on the basis of these Terms of Business (ToB) unless agreed otherwise.

### 2. Quotation and contract formation, requirement of written form

The information contained in price lists, catalogs, advertising media, etc. about "ekey" services does not represent a quotation. Contracts are only concluded with a written order confirmation from "ekey."

The customer's order represents an offer. A contract is only concluded after acceptance by "ekey." An order confirmation does not represent an acceptance of the offer but merely serves to inform about the receipt of the offer made by the customer. A corresponding declaration of intent and the associated legal validity of the contract only come about when the article is sent.

An order is only possible if all mandatory fields marked with \* in the order form have been completed. If information is missing or if "ekey" cannot fulfill the order, the customer will be notified. Before the final submission of the order, the customer is given the opportunity to correct their order. The customer receives supporting detailed information directly during the ordering process. As soon as the order process is completed, the customer will be notified of this through an information window stating "Your order is complete." This does not yet represent an acceptance of the customer's offer by "ekey."

#### Information on contract conclusion

- The customer puts the desired article in the shopping cart.
- By clicking the button "CHECKOUT," the customer proceeds to step 2, the entry of their data. Here the customer can log into their existing customer account or, as a new customer, enter their personal data, or they can order via a guest account.
- In step 3, the customer provides their billing and shipping information, as well as the selection of the desired delivery method. Next, the customer selects the desired payment method.
- In step 4, the customer checks their order again in the order overview and accepts ekey's "Terms of Business." By clicking the button "ORDER SUBJECT TO PAYMENT" the customer sends their order. The customer hereby places a binding order.
- The customer immediately receives an order confirmation, which does not constitute acceptance of the offer. The contract is only concluded when the article is sent.
- The order data will be saved by "ekey" after the order has been sent. If the customer wishes to have this in printed form, they can print out the "order confirmation." After completing the order, the customer receives the order confirmation, which contains all relevant data for their order, by email, which can also be printed out.

### 3. Prices

The prices valid on the day of the order are used for calculation. The "ekey" prices include all taxes including sales tax and duties, excluding shipping costs. The shipping costs are shown separately when ordering.

Services, especially maintenance, repair, installation work and training must be contractually agreed upon separately.

#### **4. Execution of delivery and service**

Unless otherwise agreed when the contract is concluded, "ekey" will deliver the ordered goods within 10 days. "ekey" is entitled to exceed the agreed deadlines and delivery periods by up to three weeks. Only once these periods have elapsed may the customer withdraw from the contract after setting a reasonable grace period.

"ekey" is not responsible for delays in delivery which arise due to incorrect, incomplete, or subsequently modified data and information supplied by the customer, and these cannot lead to a default on the part of "ekey." This also applies to terms in connection with processing warranty or guarantee claims and other services. Any additional costs arising from this shall be borne by the customer. "ekey" is entitled to carry out partial deliveries and submit partial invoices for orders which comprise multiple products.

Delays in delivery for which "ekey" is not responsible do not entitle the customer to assert claims for damages. Operational disruptions for which no fault can be attributed, events of force majeure, and other events beyond the control of "ekey," in particular delivery delays and similar occurrences on the part of upstream suppliers, entitle "ekey" (to the exclusion of error, non-fulfillment and damage claims) to an extension of the terms of delivery by three weeks, or in the event of further prolonged hindrances to services beyond this period, cancellation of the contract.

#### **5. Right of withdrawal**

The customer has the right to withdraw from sales contracts concluded with "ekey" without giving reasons.

The withdrawal period is fourteen days from the day on which the customer or a third party which they have designated, who is not the carrier, has taken possession of the goods or, in the case of a uniform order or a partial shipment, the last goods or the last item.

In order to exercise the right of withdrawal, the customer must inform "ekey" by means of a clear declaration of their decision to withdraw from this contract, stating their name, address, the goods ordered, and the order date. The easiest way to withdraw from the contract is to call up the invoice in the detailed view under "My invoices" in the customer account, and press the button "Return." The declaration of withdrawal can also be sent by post to ekey biometric systems GmbH, Lunzerstraße 89, A-4030 Linz, by email to office@ekey.net or by fax to +43 732 890 500 - 2002.

To meet the withdrawal deadline, it is sufficient for the customer to send the notification that they are exercising their right of withdrawal before the 14-day withdrawal period has expired.

If the customer withdraws from this contract, "ekey" has to repay all payments it has received from the customer, including delivery costs, immediately and no later than fourteen days from the day on which the notification of the withdrawal from the contract was received by "ekey." For this repayment, "ekey" uses the same means of payment that the customer used in the original transaction, unless something else was expressly agreed with the customer; in no case will the customer be charged fees for the repayment.

"ekey" can refuse to make repayment until it has received the goods back or until the customer has provided evidence that they have sent the goods back, whichever happens first.

The goods must be returned to "ekey" within 14 days of submitting the declaration of withdrawal. The return period is met if the goods are dispatched within the period. The customer is requested to always send the goods back to "ekey" in full with the original packaging.

#### **The customer bears the costs of returning the goods.**

The customer only has to pay for any loss in value of the goods if this loss in value is due to handling by the customer that is not necessary to check the quality, properties and functionality of the goods.

**Exclusion of the right of withdrawal:**

- There is no right of withdrawal for goods that are manufactured according to customer specifications or are clearly tailored to personal needs. For goods that are delivered sealed and are not suitable for return for reasons of health protection or hygiene, the right of withdrawal does not apply if the goods have been unsealed after delivery.
- For audio or video recordings such as CDs, DVDs, etc., as well as for computer software, that are delivered in a sealed package, the right of withdrawal does not apply if the goods have been unsealed after delivery.
- The right of withdrawal does not apply to goods that, due to their nature, have been inseparably mixed with other goods after their delivery.

**6. Warranty, liability****Warranty periods**

The statutory provisions on warranty apply. The warranty period is 24 months. The statutory guarantee obligations of "ekey" are not restricted by any warranty granted (current warranty conditions at: [https://www.ekey.net/wp-content/dokumente/ekey\\_Garantie\\_2022\\_EN.pdf](https://www.ekey.net/wp-content/dokumente/ekey_Garantie_2022_EN.pdf)).

**Filing a complaint; returns under warranty or guarantee**

To assert warranty or guarantee claims, "ekey" recommends that the customer open a support ticket at <https://www.ekey.net/en/support-ticket/> so that ekey support can quickly contact the customer to solve the problem.

For the assertion of **warranty claims**, "ekey" asks that the customer, as an alternative to the support ticket, submit the goods in question to "ekey" or send them to "ekey" via prepaid post supplemented by the service form ([https://www.ekey.net/wp-content/dokumente/Servicebegleitschein\\_EN.pdf](https://www.ekey.net/wp-content/dokumente/Servicebegleitschein_EN.pdf)) and a copy of the invoice. In the event that a defective product is sent in, "ekey" bears the costs of shipping to "ekey" and the risk of any loss.

To assert **guarantee claims**, the customer must submit the goods complained about to "ekey" or send them to "ekey" at their own expense, supplemented by the service form ([https://www.ekey.net/wp-content/dokumente/Servicebegleitschein\\_EN.pdf](https://www.ekey.net/wp-content/dokumente/Servicebegleitschein_EN.pdf)) and a copy of the invoice. In the event that a product subject to complaint is sent in, the cost of shipping to "ekey" and the risk of any loss are borne by the customer.

An estimate will be provided upon request for any repair services performed outside the scope of the warranty and guarantee. If the device is requested to be returned after an estimate has been sent without repairs being made, a processing fee in the amount of EUR 48.72 including VAT will be charged.

**No warranty claims can be made for products which were damaged or became inoperative**

- due to improper use, non-observance of the user information included in the delivered product's operating instructions,
- due to using the contract goods in conjunction with devices or programs which did not have an explicit, written confirmation of compatibility from "ekey,"
- due to defects stemming from changes to the product that were not made by "ekey,"
- due to repair attempts by third parties, i.e. not "ekey" or its designated service partners,
- due to improper transport or improper packaging when returning the product to "ekey,"
- due to improper handling or because of mechanical stress or impact (e.g. dropping, blows, high pressure, or similar),
- or due to improper installation of products by third parties.

**Liability limitation**

All claims for compensation shall be excluded in the case of minor negligence. This does not apply to personal injury.

## **7. Mounting and other technical instructions**

The mounting instructions, operating instructions and other technical instructions and information must be observed when using the delivered goods. In particular, "ekey" shall not be liable for any damage arising as a result of overloading or improper handling, operation, assembly, built-in fitting, or similar.

Liability or warranty for compatibility with other products or systems for a particular purpose is excluded, unless explicitly approved in writing.

"ekey" expressly informs the customer that the latter is obligated to sufficiently back up the existing dataset on the system before connecting EDP-related products or installing computer programs, updates, etc., otherwise data could get lost and the customer is responsible for lost data as well as all losses arising in association with this.

## **8. Copyright and use**

All copyrights to the agreed services (programs, documents, etc.) are exclusively the property of "ekey" and its licensors. The customer shall only receive the non-exclusive right to use the product following the agreed payment, strictly for their own purposes, only with the hardware as specified in the contract, and in accordance with the number of licenses acquired.

This contract only grants authorization to use the corresponding products. Distribution by the customer in any form whatsoever is strictly prohibited. Any violation of the copyrights of "ekey" will result in claims for damages. The customer is permitted to make copies for archival and data backup purposes only on the condition that the software does not contain an express prohibition on the part of the licensor or a third party and that all notices of copyright and ownership are transferred, unchanged, to these copies.

## **9. Reservation of ownership; lien**

All goods are delivered by "ekey" under reservation of ownership and remain its property until full payment has been made.

The customer must notify "ekey" immediately of any distraint or other impairment of property by third parties. The customer is obliged to reimburse the costs and measures to remedy the intervention, in particular the costs of legal action. The customer is obliged to treat the items of "ekey" with care for the duration of the reservation of ownership. If the reservation of ownership is asserted, the customer must compensate for any reduction in value regardless of fault and pay a reasonable fee for use.

By processing the goods, the buyer does not acquire ownership of the wholly or partially manufactured goods: the processing is carried out free of charge exclusively for "ekey." If, however, the reservation of ownership expires due to any circumstances, "ekey" and the buyer hereby agree that ownership of the goods shall pass to "ekey" upon processing, which accepts the transfer of ownership. The buyer remains their custodian free of charge. In the case of processing with goods that are still owned by third parties, "ekey" acquires co-ownership of the new items. The scope of this co-ownership results from the ratio of the invoice value of the goods delivered by "ekey" to the invoice value of the remaining goods. If the customer nevertheless sells the delivery item, they hereby assign all resulting claims against their customers up to the amount of the claims of "ekey" by way of security and "ekey" hereby accepts this assignment.

If, in addition to the reserved goods from "ekey", the processed product contains only those items that either belonged to the buyer or were only delivered under the so-called simple reservation of ownership, the buyer assigns the entire purchase price claim to "ekey." In the other case, i.e. if the advance assignments to several suppliers coincide, "ekey" is entitled to a fraction of the claim, corresponding to the ratio of the invoice value of its reserved goods to the invoice value of the other processed items.

If the customer does not meet their obligations of any kind or if they suspend their payments, the entire remaining debt shall become due, even if bills of exchange are due at a later date. In this case, "ekey" is entitled to demand the immediate return of the goods sold, to the exclusion of any right of retention. After taking back these items, it is at the discretion of "ekey" to either sell the items and credit the proceeds generated to the customer against their obligations, less the sales costs, or to take back the goods at the invoice price after deduction of any depreciation.

#### **10. Data protection, confidentiality, consent to receive advertising material**

Data shared by the customer will automatically be stored electronically and will be used solely for the purpose of fulfilling the contract concluded between the parties, such as for accounting purposes. These data will not be made available to third parties without the consent of the customer unless it is necessary due to legal or official decree.

The customer agrees that their personal data (e.g. name, address, email address) may be processed and used by "ekey" for the purpose of sending advertising leaflets or materials about "ekey" products and for the purpose of sending "ekey" newsletters via mail and electronically. These data will not be passed on to third parties. This consent can be withdrawn at any time by sending an email to [office@ekey.net](mailto:office@ekey.net).

#### **11. Information according to Article 14(1) of the Regulation on consumer ODR**

Consumers have the opportunity to submit complaints to the EU's Online Dispute Resolution platform: <https://ec.europa.eu/odr>.

Complaints can also be submitted directly to "ekey" at the following email address: [office@ekey.net](mailto:office@ekey.net).

#### **12. Legal venue, applicable law, miscellaneous**

Austrian law applies to all disputes arising from this contract to the exclusion of conflict of laws; application of the United Nations Convention on Contracts for the International Sale of Goods shall, however, be explicitly excluded.

The invalidity of individual provisions of these Terms of Business shall not affect the validity of the remaining provisions. With regard to the invalidity of provisions, the contracting parties agree to close the loophole by applying the provision which most closely resembles the ineffective provision. The contracting parties agree that the legal venue shall be the competent court in Linz, Austria, although "ekey" shall be entitled to bring legal proceedings at other courts if another legal venue has been stipulated.