

Terms of Business (ToB)

of ekey biometric systems GmbH 'ekey'

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These Terms of Business (ToB) are not valid 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. Regulations which deviate from these ToB, particularly in the ToB of the contracting party, are only valid if they have been confirmed explicitly and in written form by 'ekey' before the conclusion of the contract. 'ekey' is not obligated to object to the ToB of the contracting party, even if these ToB specify that the validity of said terms of business is an express condition. 'ekey' declares that it is only willing to contract on the basis of these ToB. These ToB shall apply to the transaction at hand as well as to any and all future transactions.

2. Quotation and Contract Conclusion, Requirement of Written Form

All quotations are non-binding and subject to change without notice. The information contained in price lists, catalogs, advertising media, etc. about 'ekey' services does not represent a quotation. Contracts are only concluded following a written order confirmation from 'ekey' or the delivery of the goods/services.

Verbal information, ancillary agreements, as well as all other declarations and promises of any kind provided by 'ekey', including in connection with settling complaints, are invalid if they are not confirmed by 'ekey' in writing as agreed. Alterations or supplements to the contract, including the ToB, must be submitted in writing in order to have legal validity. This also applies to changes of this requirement of the written form. Minor deviations from product specifications shall be deemed to have been approved.

3. Prices

Charges are based on prices valid on the day of the order, plus sales tax in the respective legal amount in EURO.

In the absence of another written agreement, all prices shall be understood to exclude supplementary expenses or costs for packaging, shipping, and customs. These shall be charged separately. The provision of services, particularly maintenance, repair, installation, and training shall be charged by 'ekey' according to the respective hourly rates. **Should the value of goods be less than EUR 250 excl. sales tax, 'ekey' shall be entitled to charge a minimum order surcharge of EUR 10 plus sales tax.**

Deviations from the agreed expenditure of time and thus from the contract price, for which 'ekey' is not responsible, shall be charged according to the hours actually worked.

The costs for travel, per diem, and overnight accommodation shall be charged to the contracting party separately based on the respective valid rates.

4. Execution of Delivery and Service

Terms of delivery are non-binding and do not start before the contracting party has fulfilled all obligations which are required for execution. These include, in particular, all technical and contractual details, any preliminary work and preparatory actions, and in the case of advanced payment, payment of the purchase price. **'ekey' is entitled to exceed the agreed deadlines and terms of delivery by up to three weeks. The contracting party may only withdraw from the contract after the expiration of this time limit following a reasonable grace period.**

'ekey' is not responsible for delays in delivery which arise due to incorrect, incomplete, or subsequently modified data, information, or supporting documentation being supplied by the contracting party, and these cannot lead to a default. This also applies to terms in connection with processing warranty or guarantee claims and other services. Any additional costs arising therefrom shall be borne by the contracting party. '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 contracting party to assert claims for damages. Disruptions of operations, 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 warranty, error, and damages claims) to an extension of the terms of delivery, or in the event of prolonged hindrances to services, cancellation of the contract. This also applies if the events occur at a time in which 'ekey' is in default.

Transport shall be at the risk and expense of the contracting party, including in the case of partial deliveries and when the carrier has been appointed by 'ekey'. Goods shall only be insured at the expense and express request of the contracting party. Following dispatch or collection by the carrier, or handover for transport or collection, the risk shall be passed to the contracting party. Regardless of the delivery location and the acceptance of all transport costs, the place of execution is agreed to be Linz, Austria. In the event that the purchased goods are to be exported, the contracting party shall cover all costs related to export, customs, and other approvals at its own expense. 'ekey' shall not be liable for the compliance of the goods with export regulations. The contracting party shall indemnify and hold harmless 'ekey' should any expenses or costs arise for 'ekey' through the dispatch, transport, or export of the goods.

Cancellations by the contracting party are only possible with the written agreement of 'ekey'. **If 'ekey' agrees to the cancellation, then 'ekey' shall be entitled to charge up to 30% of the canceled net order.**

5. Warranty, Liability, and Distributor Recourse

5.1. Notice of Defects

The contracting party shall immediately examine received goods and check for defects. **Notices of defects must be made in writing by the contracting party without delay, at the latest within one week following the receipt of the delivery, stating the nature and extent of the defect, otherwise all claims in respect to warranty, error, and damages will be excluded. Hidden defects must be reported in writing without delay, and in any case within 3 working days of their discovery.** 'ekey' must be notified of any transport damage such as mechanical damage to the delivered goods, as well as shortages, within 24 hours of receiving the goods; failure to do so will result in forfeiture of claims of any kind. Notices of defects do not qualify as entitlement to withhold full or partial payment.

5.2. Warranty Periods

New devices have a warranty period of 24 months; used devices are excluded from legal warranty rights. **The warranty period is 6 months from delivery for rechargeable batteries and uninterruptible power supplies, and 12 months from delivery for LCD displays.** The warranty period is not extended or suspended by attempts to rectify defects. Attempts to rectify defects do not constitute acknowledgment and do not lead to an extension of this time period. The same applies if defects are rectified as a gesture of goodwill, i.e., without acknowledgment of liability. In the case of a partial delivery, the warranty period shall begin with the delivery of each part.

5.3. Complaints; Returns under Warranty or Guarantee

In order to assert warranty or guarantee claims, a copy of the invoice for the goods in question as well as the service form (<http://www.ekey.net/en/repair>) must be submitted to 'ekey'/the service partner or mailed to 'ekey'/the service partner via prepaid post. If the object of the complaint is to be sent in, the costs for the delivery to 'ekey'/the service partner and the risk of a possible loss or of a delay during transport shall be borne by the person enforcing the claim. It is therefore recommended that appropriate transport insurance is obtained. **The contracting party is responsible for the costs of any expenses related to the dismantling and reassembly of the 'ekey' product.**

An estimate will be provided upon request for any repair services performed outside the scope of the warranty (see service form). 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 30.00 plus sales tax will be charged.

5.4. Scope of the Warranty

'ekey' shall fulfill warranty claims following a legitimate notice of defects at its discretion, either by means of an exchange or repair within a reasonable time limit, or a reduction in price. The contracting party can only request a cancellation if the defect is not minor and cannot be rectified by an exchange or repair, and a reduction in price is not acceptable to the contracting party. The contracting party shall be entitled to have a different company rectify the defect only if the rectification of a defect is wrongfully rejected in writing, despite a reasonable time period having been given. It is the contracting party's responsibility to prove that the alleged defect was present at the time of delivery of the goods. This also applies within the first six months after delivery of the goods. In the event of cancellation, 'ekey' may charge the contracting party reasonable compensation for the use and depreciation of the goods.

Particular recourse according to section 933b of the Austrian general terms and conditions act (ABGB) regarding fulfilled warranty claims is expressly excluded.

Liability for consequential damages resulting from a defect is excluded.

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

- 1) due to improper use, non-observance of the user information included in the delivered product's operating instructions,
- 2) due to using the contract goods in conjunction with devices or programs which did not have an explicit, written confirmation of compatibility from 'ekey',
- 3) due to making changes to the product,
- 4) due to repair attempts by third parties, i.e., not 'ekey' or its designated service partners,
- 5) due to the use of improper transport or improper packaging when returning a product to 'ekey' or an 'ekey' service partner,
- 6) due to improper handling or because of mechanical stress or impact (e.g., dropping, blows, high pressure, or suchlike),
- 7) or due to improper installation of products by third parties.

5.6. Limitation of Liability

All claims for compensation shall be excluded in the case of minor negligence. This does not apply to personal injury. The liability for indirect damages, consequential damages, loss of data, financial losses, loss of profit, action of vicarious agents, and for damages resulting from third-party claims against the contracting party shall in each case (including gross negligence and intent) be excluded. The aggrieved party must provide proof of the existence of minor or gross negligence. The limitation period for the assertion of damages claims shall be two years from the knowledge of the damages and damaging party. These stipulated liability limitations shall also apply to a possible recourse with regard to compensation of the contracting party following the fulfillment of a warranty obligation toward a consumer, for claims based on default, and for any violations of requirements to warn and inform. 'ekey' shall not be liable for a fault of its suppliers, their sub-suppliers, and the manufacturers of parts bought by 'ekey'.

6. Exclusion of Contestation on Grounds of Errors

Contestation of the contract on account of error on the part of the contracting party is excluded.

7. Installation and other Technical Instructions

The installation instructions, operating instructions, and other technical instructions and information must be observed when using the delivered or repaired goods. In particular, 'ekey' shall not be liable for any damage arising as a result of overloading or improper handling, operation, installation, assembly, or suchlike. When passing on a product, the contracting party shall ensure that all products as well as operating information and hazard warnings obtained from 'ekey' are passed on in full to the recipient, and shall establish an obligation for the recipient to become familiarized with these. Liability or warranty for the compatibility with other products or systems for a particular purpose is excluded.

The contracting party is obligated to sufficiently back up the existing dataset on the system before connecting EDP-related products or installing computer programs, updates, etc., otherwise the contracting party shall bear responsibility for lost data and for all losses arising in association with this.

8. Liability according to Product Liability Law

Recourse claims as specified in section 12 of the Austrian product liability law are excluded, unless the recourse claimant can provide proof that the fault was caused by 'ekey' and at least by gross negligence.

9. Copyright and Use

All copyrights to the agreed services (programs, documents, etc.) are exclusively the property of 'ekey' and its licensors. The contracting party shall only receive the non-exclusive right to use the product following the agreed payment, strictly for its 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 contracting party, in any form whatsoever, is strictly prohibited. The buyer does not by virtue of participating in the production of the software acquire any rights beyond its use as set forth in this contract. Any infringement of 'ekey' copyrights will result in the right to claim damages, in which case 'ekey' shall be entitled to full satisfaction.

The contracting party 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.

10. Retention of Title; Right of Retention

All goods are delivered by us under retention of title and shall remain our property until payment has been made in full.

The contracting party must inform us immediately of any seizure or other impediment to the property enforced by third parties. The contracting party is obligated to compensate for the costs and measures for the remedying of the intervention, particularly the costs of legal action. For the duration of the retention of title, the contracting party shall handle 'ekey' property with care. In the case of an assertion of retention of title, the contracting party shall compensate for any depreciation of the product, regardless of fault, and pay reasonable compensation for its use.

The buyer shall not acquire ownership of partly or completely manufactured goods due to the processing of the goods: Processing shall take place free of charge exclusively for 'ekey'. If the retention of title should expire for any reason, 'ekey' and its buyers now agree that ownership of the goods, including their processing, shall be transferred to 'ekey' who will accept the conveyance. The buyer remains their non-remunerated custodian. During the processing of goods still owned by another party, 'ekey' acquires joint ownership of these new products. The extent of this joint ownership shall result from the ratio between the invoiced value of the goods delivered by 'ekey' and the invoiced value of the remaining goods. Should the contracting party sell the supplied goods in spite of this, it would immediately assign all resulting claims against its customers to 'ekey' at an amount equaling the outstanding claims, by way of precaution, and herewith accepts this cession.

If after processing, the product contains (in addition to 'ekey' reserved goods) only goods that either belonged to the buyer or have only been supplied subject to the so-called simple retention of title, the buyer shall assign the entire purchase price claim to 'ekey'. Otherwise, i.e., if the advance cessions have been granted to several suppliers, 'ekey' shall be entitled to a proportion of the claim, according to the ratio between the invoiced value of its reserved goods and the invoiced value of the remaining processed items.

Should the contracting party not meet its obligations or cease payments, the whole of the remaining debt shall become due for payment, including in the event that a bill of exchange with a later maturity still exists. In such a case, 'ekey' shall be entitled to immediately demand the return of the sold goods, to the exclusion of any retention rights. Once the items have been returned, it is within the discretion of 'ekey' to either sell the items and to credit the generated proceeds minus the sales expenses to the contracting party for its commitments, or to take back the goods at the invoice price minus a possible reduction in value.

11. Terms of Payment

Terms of payment shall be agreed separately. **'ekey' is entitled to deliver goods only against advance payment.**

If after the conclusion of the contract a deterioration in the contracting party's financial circumstances should occur, or circumstances which could diminish its credit worthiness should become known, then all claims shall become payable to 'ekey' immediately. Further deliveries would only take place in this case against prepayment.

The contracting party is not entitled to offset claims with claims of any kind, unless they are explicitly acknowledged by 'ekey' in writing, or have been legally determined in a court of law. In the case of export transactions, the contracting party shall send back all export and customs documents and suchlike in their original form to 'ekey', otherwise the contracting party is obligated to pay any prescribed fees. Multiple contracting parties are jointly liable.

Compliance with the agreed payment dates is an essential condition in order for 'ekey' to fulfill delivery and contractual performance. **Non-compliance with agreed payments entitles 'ekey' to discontinue current work and to withdraw from the contract after a reasonable grace period.** All related costs, as well as loss of profit, shall be borne by the contracting party. **The contracting party is not entitled to withhold payments due to incomplete delivery, guarantee or warranty claims, or complaints.**

12. Data protection, Confidentiality, Consent to Receive Advertising Materials

'ekey' employees are obligated to comply with the provisions of section 15 of the Austrian data protection act. Data shared by the contracting party 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. This data will not be made available to third parties without the consent of the contracting party unless it is necessary due to legal or official orders.

The contracting party agrees that its personal data (e.g., name, address, e-mail) 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. This consent can be withdrawn at any time by sending an e-mail to office@ekey.net.

13. Legal Venue, Applicable Law, Other

Austrian law shall apply to all disputes arising from this contract to the exclusion of conflict of laws rules; 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.