

# General Purchasing and Ordering Conditions

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For ekey orders, only the purchasing and ordering conditions given below shall apply. By accepting the order, the ekey purchasing conditions are deemed to have been accepted and any Terms of Business (ToB) contained in the seller's offer or in its order confirmation for the execution of the order in question are also invalidated, even if ekey has not expressly contradicted said Terms of Business. Terms and conditions of sale and delivery of the seller shall thus have binding effect on ekey only if and insofar as ekey has acknowledged them in writing, and said terms and conditions shall only apply to the particular business transaction in question.

## **1) General terms and conditions**

The legal relations between the supplier and the customer shall be determined entirely on the basis of the purchasing conditions set out below. Any contradicting terms are herewith expressly contradicted. The purchasing conditions shall apply to all business transactions with the supplier.

## **2) Orders**

Only orders placed in writing shall be binding on ekey. Agreements made verbally or by telephone thus require written confirmation from ekey. ekey can make changes to the delivery item – in terms of construction and design – for the supplier, within the limits of what is reasonable. Effects in particular as concerns any additional or reduced costs as well as the date of delivery are to be mutually agreed in a suitable manner.

## **3) Order confirmation**

Unless otherwise agreed in writing, the ekey order shall be accepted by the supplier returning a signed copy of the ekey order or its order confirmation. Should this requirement not be met within five (5) working days from the purchase order date, ekey will view the order as accepted in its full scope. Changes made by the supplier in the course of the order confirmation are only valid with the written consent of ekey; this also applies in particular if no price is specified in the order. These conditions shall apply mutatis mutandis to any services offered. The deadlines and quantities specified in the order shall be binding. Contractor employees who do not have power of representation under commercial law may not make binding agreements or commitments that would deviate from existing agreements and these purchasing conditions. The customer is not bound by such statements. The order confirmation is to be sent in writing within two (2) working days of the purchase order date.

## **4) Cancellation**

The customer reserves the right to withdraw from the contract or the order at any time against compensation of the costs demonstrably incurred up to such point in time. This only applies to products and services, which can only be manufactured for the customer, prepared, and used by the purchaser. No costs are reimbursed for standard products and services which can also be distributed and sold to other parties.

## **5) Prices**

The prices listed in the order from ekey are binding. If the prices, payment, and delivery conditions as well as delivery dates are not stipulated in the order, the conditions of the general purchasing and ordering conditions shall apply. The order is only valid if the subsequently specified prices are accepted by ekey in writing within five (5) days. Unless the order is based on a different written agreement, the prices quoted apply with free delivery to the destination (DDP destination according to Incoterms 2010 as amended), including packaging and transport insurance.

Domestic prices are quoted net, excluding value added tax. Unless otherwise agreed, no remuneration is given for the preparation of offers, cost estimates, plans, and documentation.

## **6) Packaging**

Unless otherwise agreed in writing, all packaging materials are to be understood as included in the price. With the exception of special provisions, the goods are to be packaged in a manner that is common in the trade, suitable, appropriate for transport, and free of flaws (in accordance with any legal norms) for the impact to be expected in groupage and general cargo traffic. Unless otherwise agreed, loading equipment and packaging become the property of ekey. Returns shall be properly packaged and made at the risk and expense of the supplier. The supplier assumes liability for all damage incurred in the course of delivery due to improper packaging. The packaging must always feature the ekey order number and the respective part numbers. For Austrian suppliers, the ARA license number must be included on the invoice and the bill of lading.

## **7) Delivery time & deliveries**

The agreed delivery time, which is to be calculated from the purchase order date, must be strictly observed. In the case of earlier deliveries, which may only be made with the consent of ekey and without which ekey reserves the right to offset associated costs in the course of full payment (e.g. storage costs), the payment periods only start from the originally agreed delivery date. If the supplier does not meet the specified delivery date in terms of time or scope of delivery, ekey reserves the right to assert its statutory rights in such cases or, alternatively, to apply a no-fault penalty in the amount of 0.5% of the order amount per day of delay, but no more than 10% of the order total. ekey expressly reserves the right to assert claims for damages, in particular compensation for any damage caused by delay (lost profit, penalty claims, damage from business interruption, and other expenses). Furthermore, if the agreed delivery date is not met or the delivery is incomplete, ekey is entitled to withdraw from the order – in whole or in part – without setting a grace period, without prejudice to its claims for damages. Any excess or insufficient quantities require the written consent of ekey. Should ekey indicate willingness to accept the goods despite the deadline having been missed, all costs relating to the need for special measures to prevent further delays (e.g. air, express freight, etc.) must be borne by the supplier. ekey is entitled to modify the quantities and dates for orders already placed, up to five (5) working days before the planned delivery date. Foreseeable delays in delivery or other circumstances hindering the order from being fulfilled must be notified with appropriate justification to ekey without delay. Such an agreement only releases the supplier from its liability for damages to the extent that ekey has had the opportunity to avoid or reduce the resulting damage. The additional expenses for the avoidance or reduction of damage that became necessary due to the delay in delivery shall be borne by the supplier.

### **8) Dispatch and transfer of risk**

Unless explicitly agreed otherwise, the shipping and delivery options are to be explicitly discussed with ekey. The transfer of ownership shall take place at the same time as the transfer of risk provided for in accordance with INCOTERMS 2010 only when the goods are duly accepted at the destination specified in the order. This shall also apply in the event that freight-free delivery has not been agreed separately. The shipping notice (bill of lading, notifications of delivery, packing slips, packing lists) must be sent to ekey immediately when each individual shipment is dispatched. The shipment itself must be accompanied by the waybill, a packing slip, and the bill of lading with indication of the ekey order number and the part number. ekey will only bear the costs of the transport insurance if this has been expressly agreed in writing. For purposes of customs documentation with cross-border shipments, at least two invoices and certificates of origin must be enclosed with the shipping documents. All shipments that cannot be accepted due to a lack of compliance with the ekey shipping, customs clearance, or documentation regulations shall be stored at the seller's expense and risk until proper paperwork is verifiably transmitted, which thus enables due conduct of the business transaction. All risks, damage, and costs resulting from non-compliance with the ekey shipping, customs, and documentation regulations shall be borne by the seller or the due date of the invoice payment shall be accordingly postponed to the point in time following the due and error-free delivery.

### **9) Documentation regulations**

All shipping documents and invoices must clearly and legibly state the date of the ekey order, the ekey order number, the relevant supplier number at ekey and – line-by-line – ekey part, order, drawing, and component number as well as the quantity, unit, and customs tariff number. Prices may only be listed on the invoices along with the above-mentioned information. EU-based suppliers must document the country of origin of the goods for the customer by means of a long-term supplier declaration and indicate such on the invoice, with suppliers not based in the EU doing so by means of a preference certificate or a certificate of origin. A change in the origin of the goods must be notified to the customer immediately, and without being requested to do so. The supplier shall indemnify the customer against all costs incurred as a result of inaccurate, incomplete, or incorrect information on the origin or the documentation related thereto. The supplier must allow a representative of the customer access to its business premises and production facilities. The supplier must ensure that each of its subcontractors is contractually obliged to comply with the provisions contained in this clause 9.

### **10) Warranty**

Unless otherwise stated in the ekey order, the goods must have the standard quality, shape, etc. in order to be considered in conformity with the contract. The supplier shall therefore provide a warranty that its goods are free from defects; conform to the agreed specifications, drawings, samples, or descriptions; have no construction errors; are of contractual quality; and are suitable for the purpose or use intended by the customer. The supplier shall also warranty that it complies with all laws and regulations applicable to the relevant sales markets with regard to the manufacture and, if applicable, the development of the goods, as well as its contractual obligations. For rejected goods, at the option of ekey and at no additional cost, a replacement delivery (exchange of the defective goods for goods without defect) or a credit note at the invoice price is to be made, with the latter only being applicable if a replacement delivery has been refused by the supplier or is not possible in due time. If necessary, ekey is also entitled to remedy the problem independently or to have it remedied by a third party at the supplier's expense. If the defects are both material and irreparable or if the supplier refuses to remedy them after being requested to do so, ekey is entitled to withdraw from the contract and to claim damages accordingly. The supplier expressly waives the claim of late notification of defects. To remedy the complaint, ekey is entitled to notify, with effect, the supplier of any apparent defects within 30 days; with regard to concealed defects, ekey is not bound to the observance of certain deadlines for filing the complaint, but once ekey becomes aware of such defects, it will inform the supplier without delay. Concealed defects also refer to defects that, in the case of goods that are usually left packaged until they are used, only become visible when the goods are removed from the packaging. Even the fact that ekey may have accepted a delivery of goods not corresponding to its quality standards does not deny ekey the right to object to further deliveries of unsatisfactory quality. For replacement deliveries and repaired goods, the warranty period shall commence upon due acceptance or establishment of a defect-free status following repair. The supplier shall warranty a complete inspection of outgoing goods to ensure a proper and faultless delivery. ekey only conducts an inspection of incoming goods with regard to visually recognizable damage and/or deviations in identity and quantity. Unless otherwise expressly agreed with the supplier, the statutory warranty period of 24 months shall apply. The obligation to notify defects under Section 377 Commercial Code (Unternehmensgesetzbuch) is hereby expressly excluded. ekey shall be indemnified and held harmless for all costs and damages, in particular those that are subject to Austrian or foreign product liability provisions or that arise from defective or non-contractual deliveries. This shall also apply to all damages that arise due to their deficiency before a third party (buyers of ekey products and systems), but only to the extent that claims are made against ekey for such; necessary covering purchases shall be regarded as included. ekey is obliged to inform the supplier, without delay, of any such claim made by third parties (buyers). ekey is also entitled to withdraw from the entire order or the framework order if part of the delivery is defective – without prejudice to its claims for compensation – without the supplier having any claims against ekey. The seller shall also assume the warranty obligation for the goods and components that it supplies but does not manufacture.

### **11) Freedom from damages and claims**

The supplier shall indemnify and hold ekey completely free from damages and claims for all disadvantages of any kind, which ekey may incur directly or indirectly as a result of a defective delivery or service, a breach of official safety regulations, a breach of the agreed delivery times, dates, and deadlines, underdelivery or any other legal reasons attributable to the supplier. The supplier is obliged to fully compensate for all damage incurred in connection with such. This also applies in particular to any potential expenditures incurred (including material, transport, and personnel costs) internally or to third parties in connection with the detecting or remedying of defects, as well as any frustrated material and personnel costs and other costs caused by defects; this also applies to lost profit and damages from business interruption, to any additional expenditures for its internal or third-party personnel and materials which have been caused by the defects or delayed delivery or which are associated therewith, as well as to any penalties, damages, and/or warranties to be provided by ekey to its customers.

The supplier shall bear full responsibility for its subcontractors and their sub-suppliers. In particular, the supplier is liable for any fault of its subcontractors, their sub-suppliers, and the provider of the parts or services, which the supplier has purchased, as for its own fault.

## **12) Invoicing & payment**

Invoices are to be issued once. In any case, the invoice must contain all legally required information, in particular the VAT number of the seller and the VAT number of the customer and also the supplier number, number and date of the order or the call-off, date and number of the order confirmation, additional data of the customer (e.g. account details, part number), place of unloading, the number and date of the bill of lading, and the amount of the invoiced goods. At the customer's request, a copy of the proof of performance signed by the purchaser must be enclosed therewith. Copies must be designated as such and provide indication of the supplier. The invoices are to be issued in accordance with the ekey regulations as listed under clause 9 of the ekey general purchasing and ordering conditions. Invoicing of services and proofs of performance are to be enclosed with the invoice. Invoices and shipping documents that are not issued in accordance with these regulations cannot be recognized by ekey and will be returned. In the case of incorrectly or incompletely issued invoices, credit notes will be requested, without exception, for the entire incorrect invoice amount, including a new invoice. The payment period only begins once the correct documents have been received. Unless otherwise expressly agreed in writing, payment shall be made after full receipt of the goods and invoice and, at the option of ekey, within 90 days net, after 45 days with a 2% early payment discount, or after 21 days with a 3% early payment discount. The date when the invoice is received (proof of receipt stamp) is decisive for the payment deadlines. ekey reserves the right to either pay by bank transfer or to give its acceptance, which, according to the ekey instructions, is to be submitted for discount to a financial institution of its choice. In this case, the interest and expenses will be settled with ekey directly by the bank. The debt of ekey may only be ceded only with the express consent of ekey. Cash-on-delivery shipments will only be accepted if this has been expressly agreed. Claims from the delivery of goods and the performance of services shall expire one (1) year after acceptance of the goods or completion of the works. ekey reserves the right to conduct payment once a week, with payment being made in the week that said payment is due. Payment does not imply recognition of a proper delivery or a waiver of any rights to which ekey is entitled. In the event of counter claims, ekey is entitled to compensation.

## **13) Order documentation & copyright & non-disclosure**

The contracting parties undertake before one another to treat as business secrets all non-evident commercial and technical details of which they become aware through the business relationship. All supplements to ekey inquiries or orders (e.g. drawings, drafts, samples, models) as well as other auxiliary means such as tools and the like shall remain the property of ekey, to which ekey can have free access at any time, and may neither be copied, nor made available to third parties, nor used for other purposes without the written consent of ekey. The supplier is responsible for returning such to ekey with the offers or following fulfillment of an order, without being requested to do so, at its own expense. The use of order documents (drawings, logo, model, prototypes, etc.) for commercial purposes requires the expressly provided consent of ekey. Both contracting parties commit to maintain confidentiality during and after the end of the business relationship with regard to confidential matters and additional information of which they gain knowledge in the context of the given business relationship. The supplier is, however, authorized to provide its sub-suppliers with confidential information to an appropriate extent and insofar as necessary to guarantee the fulfillment of the order. Both contracting parties undertake to also make this confidentiality obligation binding for their employees. The supplier is liable for any damage incurred by ekey as a result of this obligation being breached.

## **14) Product liability**

The supplier confirms that it is familiar with the final product into which its supplied parts or raw materials are to be integrated. It is responsible for ensuring that its product fully meets the requirements of the final product, unless the delivery is made according to specifications or drawings to the contrary provided by ekey. Foreign suppliers are obliged to indemnify and hold ekey harmless in the event of a claim under the Austrian Product Liability Act (Produkthaftungsgesetz) – i.e. to reimburse ekey for all expenses and costs that ekey has to pay due to the delivery of the defective final product regardless of any existing option for legal recourse. The supplier is aware of the extended liability of the Austrian Product Liability Act (Produkthaftungsgesetz). It therefore acknowledges that not only personal injury but also damages for pain and suffering as well as all property damages and the resulting financial damages including loss of profit are to be compensated, regardless of who suffers it. Should ekey be liable due to the defectiveness of the partial product covered by the contract, the supplier undertakes, in addition to its statutory liability, not only to reimburse ekey for compensatory services that ekey has provided, but also to reimburse all costs that ekey has incurred as a result of the liability case. The supplier must make immediately available to ekey all information about potential or recently discovered defects in the supplied product. In the event that the delivered product or the basic material is no longer used (or usable) by ekey or at least no longer used in connection with the construction as a result of new scientific findings, the supplier undertakes to take back all remaining stocks that were available prior to the new scientific findings being published in this regard at the invoice value. The contracting parties presume that the product or raw material ordered is a product of the supplier for which the supplier is liable as the manufacturer. Should it subsequently become apparent that all or certain partial products were not manufactured by the supplier himself, the supplier remains nevertheless liable before ekey, as a provider. In the case of recurring products, ekey must be informed about a change to the product, changes to a feature, or a part of the product. This applies to both the material and the manufacturing process of the supplier and sub-supplier. If this change makes the product unusable for ekey, this shall constitute a reason for ekey to terminate the supply contract without delay. As part of its business, the supplier is obliged to conclude an existing product liability insurance policy with sufficient coverage and, upon request, must also provide ekey with relevant evidence establishing that such a policy has been concluded. Restrictions regarding any claims to which ekey is entitled shall be excluded in advance.

## **15) Damages**

Unless the payment of damages is governed otherwise in these purchasing conditions, regardless of the degree of fault, the seller is in any case obliged to compensate for the damage, including lost profit, which the customer receives directly or indirectly as a result of a faulty delivery, the violation of official safety regulations, or for other legal reasons attributable to the seller. In particular, the supplier is liable for all consequential damages arising from defects and pure economic losses.

## **16) Quality, safety, and environmental protection**

Unless otherwise agreed, the supplier must meet the quality standards under ISO 9001, as amended. The delivered goods must comply with Austrian and international safety and environmental protection regulations and in particular may not contain cadmium, mercury, and their compounds, as well as halogenated flame retardants. Detailed quality standards are regulated in separate written quality assurance agreements (QAAs).

### **17) Information, substance declaration, RoHS, disposal**

Irrespective of statutory instruction obligations, the seller has to give the customer all necessary and useful information about the goods to be delivered or the service – in particular instructions for proper storage and safety data sheets in accordance with Commission Directive 91/155/EEC, 93/112/EEC, and 99/45/EC. In addition, it must inform the customer of the possibility of hazardous waste or waste oils arising from the goods it has delivered and specify, in particular, the type and any possible disposal options. At the customer's request, the seller is obliged to take over – free of charge – the waste remaining after the intended use of the goods that the seller delivered or of similar goods within the meaning of the Waste Management Act, while remaining limited to the scope of the quantity delivered by it. If the seller refuses to take over responsibility for such or if this is not possible, the customer can dispose of it at the seller's expense. The seller guarantees that the deliveries to be made on the basis of the order are RoHS-compliant (Restriction of Hazardous Substances in Electrical and Electronic Equipment) and thus correspond to the limit values in connection with the RoHS directive on the restriction of the use of certain hazardous substances in electrical equipment and electronic equipment (EC Directive 2002/95/EC) existing at the time of delivery. In the case of deliveries that are not RoHS-compliant, the seller must reimburse the customer for all damages resulting from the deliveries, irrespective of any warranty claims.

### **18) Tools, installations, devices**

The tools, installations, and devices created on behalf of and paid for by ekey are its unrestricted property, to which it can have access at any time and at no additional cost, including spare parts, design drawings, documentation, maintenance documents, Operating instructions, and rights. More detailed regulations in this regard are to be specified in a separate tool ownership agreement. Models, matrices, templates, prototypes, tools, and other manufacturing equipment, as well as confidential information provided to the seller by the customer or paid for in full by the latter, may only be used for deliveries to third parties with the prior written consent of the purchasing party. The seller is obliged to continuously maintain and, if necessary, repair such manufacturing resources at its own expense so as to guarantee that these manufacturing resources are ready for unrestricted use at all times. The seller is obliged to conclude an insurance policy for much manufacturing equipment with coverage adequate for any form of damage and, upon request, to provide evidence of such insurance having been concluded and the validity of said insurance to the customer.

### **19) Provisions of materials**

Any material provided shall remain the property of the customer and are to be stored, named, and administered, separately and free of charge. The acceptance of these materials is to be confirmed upon request of the customer. The use of these materials is only permissible to conclude orders for the customer. In the event of a decrease in value or loss of said provided material that deviates from the norm, the supplier must provide a replacement. ekey shall bear the consequences of not providing the required material in a timely manner, but any claims for compensation by the supplier due to said material not being provided in a timely manner are excluded in any case. The supplier is obliged to notify the customer immediately if claims by third parties are asserted on the material provided by the customer – including by way of legal seizure.

### **20) Worker protection**

The supplier commits to take over the coordination with regard to Section 8 of the Employee Protection Act (Arbeitnehmerschutzgesetz).

### **21) Property rights**

The supplier shall declare that the delivered goods and products do not interfere with third-party patent rights and that it will indemnify and hold ekey harmless to the full extent in the event of patent disputes regarding delivered goods and disputes regarding other industrial property rights and third-party patent applications. Drafts made for ekey by the supplier, irrespective of their type, shall become the sole property of ekey with all rights, in particular with all rights of use. Software developed for ekey – as an independent product or in connection with hardware – shall be handed over to ekey, including the source code and all other documentation required for the use and maintenance of the software. The name of the provider or its company logo may only appear on goods and similar things that are manufactured according to ekey specifications or exclusively for ekey with the express written consent of ekey. Such consent only applies to the individual and special case for which it was granted. If the customer orders parts that it developed, the seller undertakes to supply said parts solely to the customer. The seller also undertakes not to make mention of or display these parts in its catalogs. ekey is entitled at any time to offset the supplier's claims with counterclaims to which ekey is always entitled vis-à-vis the supplier for whatever reason.

### **22) Place of performance & court of jurisdiction**

The place of performance for the deliveries and services provided on the basis of these purchasing conditions shall be understood as the place to which the delivery is to be made in accordance with the ekey provisions or that which has been agreed as the place of delivery in advance of the delivery date. For any disputes, the exclusive jurisdiction of the court relevant for the customer is agreed. The jurisdiction for both portions is Linz. It is agreed that Austrian law will apply exclusively. For legal disputes with a supplier whose place of business is in a country with which there is no enforcement agreement in relation to Austria, the sole and exclusive jurisdiction of an arbitration tribunal with the arbitration and settlement rules of the Federal Chamber of Commerce and Industry (Vienna) with its registered office in Vienna is expressly agreed. The language of the arbitration proceedings shall be exclusively German.

### **23) Force majeure**

In the event of force majeure circumstances, such as labor disputes (strikes, lockouts), unrest, official measures, natural catastrophes, and other unpredictable, inevitable, and severe events, ekey is entitled to withdraw – in full or in part – from the order or to request that the delivery or execution of an issued order be performed at a later time, without thus entitling the supplier to any additional claims before ekey. In the event of the partial loss of production capacities or delivery options due to force majeure, the supplier is in any case obliged to continue to supply the customer at least in proportion to the remaining production capacity or delivery options. Even in the event of force majeure, the supplier is also obliged to make all technically possible and economically reasonable efforts to ensure the continued delivery of the order.

### **24) Severability clause**

Should individual parts of a further contract or these general purchasing conditions be ineffective or void, the remaining provisions of the contract and the general purchasing and ordering conditions shall remain unaffected. The ineffective or void provisions shall be replaced by effective provisions of economic equivalence. The same shall apply in the event of a regulatory gap.