

**General Terms and Conditions of the  
E.E.P.D. GmbH / Status as of October 18, 2020**

**1 Subject of and Contract Conclusion**

**1.1** These General Terms and Conditions apply to the Individual Contracts between the customer (hereinafter the Customer) and E.E.P.D. Electronic Equipment Produktion & Distribution GmbH, Weichs (hereinafter EEPD) (hereinafter the Individual Contracts) for the purchase of the products described in greater detail in the Individual Contract by the Customer or for the manufacture of products by EEPD for the Customer described in greater detail in the Individual Contract. For all contracts concluded via online stores (shop.eepd.de or other online platforms such as Amazon or ebay) the respective terms and conditions of these online stores apply exclusively.

**1.2** All offers made by EEPD for the conclusion of an Individual Contract are non-binding. After the order by the Customer, the Individual Contract is first concluded by the written confirmation of the order by EEPD. Deviating Terms and Conditions of the Customer not expressly accepted by EEPD are not binding for EEPD. This also applies if EEPD does not expressly contradict deviating General Terms and Conditions of the Customer.

**1.3** The EEPD offers for the delivery of products do not refer simultaneously to the maintenance of the products nor to training. Insofar as maintenance and/or training is/are agreed, the maintenance conditions of EEPD shall apply. In the Individual Contract, the parties can agree that EEPD is to assemble and install the products; further details are then set out in the Individual Contract.

**1.4** The Customer and EEPD can also agree off-the-shelf orders, i.e. orders, in which, according to the provisions in the Individual Contract, a certain number of products are to be purchased in a certain period of time (usually 12 months) by the Customer from EEPD. The number of items and the deadlines for the individual deliveries have not been fixed at the time of the order confirmation. The overall number of products of an off-the-shelf order is to be purchased within the fixed period of time after the placing of the order, whereby the individual call may not fall below the minimum number of items fixed by EEPD. The latter is entitled to perform and deliver prematurely in as far as this is not unreasonable for the Customer in the individual instance.

**2 Delivery**

**2.1** The delivery schedules or deadlines named by EEPD in the Individual Contract are non-binding, insofar as not expressly agreed otherwise in writing. Delivery deadlines begin to run from the confirmation of the order date by EEPD. If the Customer has to obtain approvals before the delivery of the products (e.g. import or export licenses) or clearances for the delivery or to make an advance payment, the delivery period is extended accordingly by the timespan until the approval/clearance has been obtained or the advance payment made. As long as the Customer is behind schedule with participatory actions, the delivery deadline is accordingly extended. The delivery deadline is complied with if up to the expiry date the product has left the EEPD site or EEPD has notified the Customer of despatch readiness. § 649 of the German Civil Code is excluded.

**2.2** Delivery is made ex works in Weichs in the sense of the Incoterms of 2010. The products are commercially packed and made available uninsured by EEPD for transport. EEPD will, at the request of the Customer, select the transport company at his discretion. The risk is transferred at the latest with the collection of the products by the transport company to the Customer, if EEPD has accepted other services in the Individual Contract such as the transport costs or the assembly on the Customer's premises. Part deliveries and part performance by EEPD are permissible, insofar as this in the individual instance is not unreasonable for the Customer.

**2.3** EEPD is not in arrears concerning the Customer with a delivery delay even in the event of a binding delivery date/deadline, if the supply of product parts from EEPD suppliers, despite a previous confirmation of the delivery date causes delays for reasons which are not the responsibility of EEPD. EEPD shall also not be in default in the event of unforeseen obstacles to delivery for which EEPD is not responsible (e.g. force majeure, strike, operational disruptions in EEPD's own operations or those of its suppliers). In order to enable further delivery, any delivery obstacles due to the SARS-CoV-2 virus are considered unforeseen (vorhergesehen). The delivery deadline is extended accordingly. EEPD will notify the Customer of every delivery delay for the products immediately. In the case of delay of more than three months, each of the parties to the contract has the right to rescind; claims for damages due to such a rescission do not exist.

**3 Acceptance**

**3.1** The Customer has to accept the products within five working days after receipt of each delivery. Insofar as in the Individual Contract, assembly of the products by EEPD was agreed, the Customer has to accept the products and the assembly within five working days after completion of the assembly.

**3.2** After expiry of this period, the products (and where appropriate the assembly) are considered accepted, unless the Customer asserts justifiably not inconsiderable deficits with EEPD; insignificant deficits may not be the cause for refusing acceptance.

**3.3** If the Customer accepts defective products (and/or, where applicable, defective assembly), although he is aware of the defect, he only has a claim on defects if he reserved this right upon acceptance.

**4 Prices and Payment**

**4.1** The prices are to be seen from the warehouse of EEPD. For delivery dates of more than four months, EEPD is entitled to increase the prices commensurately; this does not apply for off-the-shelf orders (Sub-Section 1.4). The Customer can withdraw from the contract if EEPD increases the prices by more than 15 %.

**4.2** Insofar as in the Individual Contract nothing else is agreed, invoices are to be paid by the Customer within 8 days of the invoice date without deductions. Discounts or rebates are only accorded after express written agreement. The Customer can only pay by cheque or bill of exchange, insofar as this was agreed in the Individual Contract. Bill of exchange costs and discount charges are borne by the Customer.

**4.3** Insofar as a goods credit insurance obtained by EEPD for the

goods ordered by the Customer is terminated subsequently by the insurer before order confirmation by EEPD or if after order confirmation it becomes evident that the payment claim by EEPD is placed at risk by a lack of payment ability of the Customer, EEPD is entitled to deliver contemporaneously against cash on delivery or to demand a security; the cash on delivery charges are borne by the Customer. EEPD will notify the Customer before the delivery takes place. In addition, § 321, para. 2 of the German Civil Code applies.

**4.4** The Customer can only set off such claims which are undisputed or legally final and binding (*rechtskräftig festgestellt*).

**4.5** For payments arrears of the Customer, EEPD can assert, with the proviso of an assertion of further damages, claim interest on arrears of 8 % above the basic rate of interest. Before the payment of due invoice amounts including interest on arrears by the Customer, EEPD is not obliged to perform any other services under any current contract with the Customer.

**5 Proprietary Rights**

**5.1** EEPD reserves the proprietary rights to all products it delivers (hereinafter the reserved goods) until full payment has been completed. Handling and processing of reserved goods are always undertaken for EEPD as the manufacturer. For handling and processing of reserved goods involving goods not belonging to EEPD, the latter is, until complete payment has been made, the co-owner of the new item in the relation of the value of the reserved goods to the other processed goods at the time of processing.

**5.2** The Customer is entitled to sell the reserved goods in a proper business process. He is not entitled to use other dispositions concerning the reserved goods (e.g. pledging or security agreement). The Customer always assigns now his claims resulting from a sale of the reserved goods to EEPD, and that irrespective of whether the reserved goods are sold in an altered or unaltered state or whether they are sold to a single purchaser or to several. If the value of the assigned claims exceeds the realisable value of the reserved goods by more than 20 %, EEPD releases the excess part.

**5.3** The Customer is entitled until collection of the generated accounts receivable from the resale up to revocation. He is obliged upon request by EEPD to provide information on all accounts receivable assigned in accordance with Sub-Section 5.2 and to pass on the necessary documentation, in particular, a list of the debtors with their named and addresses, the amounts of the receivables and the date of the invoice issue. EEPD has the right of notification of the debtor of the Customer. The Customer is obliged to notify EEPD of access of third parties to the products delivered under proprietary rights by sending the pledging protocol.

**5.4** In cases of significant violations by the Customer, in particular concerning payment arrears, EEPD is entitled to the taking back of the reserved goods.

**6 Defects and Complaints**

**6.1** The Customer and EEPD agree that the products have the presented characteristics as shown in the commensurate product datasheet or Individual Contract for the respective product. Other specifications by EEPD on the products and the intended purpose (e.g. in manuals or other materials) have not been agreed and are only to be considered as approximative. The technical data of the products can be altered by EEPD, to the extent that this is reasonable for the Customer, taking also the interests of EEPD into the consideration.

**6.2** Within a period of five working days after delivery of the products, the Customer will undertake a check of the products in accordance with § 377 of the German Commercial Code for completeness, transport damage, external damage and otherwise recognisable defects. Possible damage and defects are to be complained about within this period of five working days to EEPD (in any event before installation, processing or resale); otherwise the products are seen as approved with the exception of non-recognisable defects. A non-recognisable defect in the inspection is to be complained about to EEPD within five working days after identification of this defect by the Customer; otherwise the products are seen as approved, also taking this defect into consideration.

**6.3** Defect claims are statute-barred in a year from the delivery of the products to the Customer in the case of a sales contract or from the acceptance by the Customer in the case of a work and services contract (warranty period). Within the warranty period, EEPD will – subject to Sub-Section 6.4 – in the case of a not insignificant defect complained about in due time, in accordance with Sub-Section 6.2, either rework the products or replace them by new products. Should this not be possible or be unacceptable for EEPD and should two reworking attempts have failed or the follow-up achievement have failed for other reasons, the Customer can terminate the contract or reduce the price for the affected products. Subject to Section 7 claims over and above this for defects do not exist.

**6.4** Insofar as parts of the products or the software integrated in the products (e.g. Microsoft Corporation software, Redmond, Washington) are not manufactured by EEPD itself but purchased by EEPD from third parties, the defect liability (warranty) of the third party (original manufacturer) applies. To this extent, EEPD excludes all own defect liability and assigns to the Customer its claims against the original manufacturer for defects. If the Customer cannot assert any claims regarding defects against the original manufacturer despite recourse in court by the Customer for legal or factual reasons, the Customer is entitled to the claims against EEPD in accordance with Sub-Section 6.3.

**6.5** For the performance of reworking, EEPD can demand of the Customer that the damaged part or product be sent for repair and thereafter return to EEPD or that the Customer makes the damaged part or product available so that a service technician from EEPD can carry out the repair on the Customer's premises.

**6.6** If operating or maintenance instructions are not followed, alterations or changes made to the products, parts exchanged or expendables used, which do not match the original specifications, claims for defects against EEPD are to that extent excluded. In addition, claims for defects are excluded, generated by inappropriate or inexperienced handling, erroneous installation by the Customer, natural wear-and-tear or negligent treatment, unsuitable operating resources, faulty fitting, chemical, electrochemical or electrical influences, insofar as this cannot be attributed to a culpable action by EEPD.

**6.7** In case of a notice of defect by the Customer, the Customer shall

not be entitled to charge any costs related to the defect claimed in advance of, concurrently with or after an effected notice of defect acc. to Section 6.2 to EEPD. In particular, the Customer shall not be entitled to deduct such costs when settling open accounts or to offset such costs against EEPD's accounts receivable. Is the Customer's notice of defect legitimate and brought forward in time and within the defects liability period acc. to Section 6.3, EEPD shall remedy the defect claimed according to the preceding provisions. In case of a successful remedy of defects by subsequent delivery or subsequent improvement, the Customer shall not be entitled to any further claims against EEPD, subject to the provision in Section 7. In case of a Customer claim for a reduction acc. to Section 6.3, Sentence 3, the Customer shall equally not be entitled to deduct an amount of reduction when settling open accounts or to offset such an amount against EEPD's accounts receivable. Rather EEPD shall elect either to deduct the amount of reduction from its next invoice to the Customer or to pay it out to the Customer.

**6.8** The Customer only has claims for faults against EEPD and these are not assignable.

**7 Damages**

**7.1** EEPD is liable unrestrictedly only for injury to life and limb and health and for intent and gross negligence also of its legal representatives, senior management and agents. For slight negligence, EEPD is only liable insofar as a duty has been infringed, the compliance with which is of particular significance for the achievement of the contractual purpose (cardinal duty).

**7.2** For a slightly negligent infringement of a cardinal duty, EEPD is only liable for damages, the occurrence of which must be typically expected in conjunction with the delivery of the products. The liability is thereby overall limited to double the amount of the order, a maximum, however, of Euros 1.000.000,00; to the extent the Customer fears a higher damage risk, he can effect a special agreement with EEPD for the extension of the maximum liability amount.

**7.3** The liability in accordance with the Product Liability Act remains unaffected. The liability for loss of data is restricted to the typical restoration effort, which would have occurred for regulating and risk-matching preparation of back-up copies.

**7.4** The Customer can demand damages instead of performance only under the further pre-requisite that he initially set a commensurate deadline of at least 60 days with the threat of rejection and this deadline expired without results; the same applies to termination due to violations of duty, which do not simultaneously constitute a defect. The Customer is obligated to assert all claims for damages within three months after cognisance thereof against EEPD; otherwise these claims are excluded.

**7.5** The products are not intended for resale to consumers. The Customer is responsible that the products are not sold to consumers – even by its customers – and will not assert any rights of recourse vis-à-vis EEPD based on defects acc. to § 478 German Civil Code.

**7.6** The Customer has to give consideration in the performance of this contract to all the relevant statutory and official provisions. In the case of resale of the products abroad, he has, in particular, to pay attention to the applicable import and export regulations. He has to ensure that also his customers comply with these provisions.

**7.7** Any demonstrations and tests of EEPD products on the Customer's premises are to be carried out on isolated test installations only and take place at the sole risk of the Customer.

**8 Software and Copyright**

**8.1** EEPD grants the Customer the non-exclusive, in terms of time, unrestricted right to use the software integrated in the product in object code format together with the product without changing the software. The Customer may not separate the software from the products and has to forbid his customers from separating the software from the products.

**8.2** The Customer is not entitled to change or process the software integrated in the products or to make copies thereof. The Customer may not retranslate, take apart, decompile or otherwise undertake attempts with the software to establish the source code of the software unless this is statutorily permissible for the generation of the inter-operability. He may also not allow third parties to do so.

**8.3** The Customer is not entitled to remove or obliterate the corporate labels, marks, copyright indicators, serial numbers, manufacture dates or other pointers on the products delivered by EEPD or third parties. In addition, the Customer is not entitled to use marks of EEPD, of EMTrust GmbH, of Inperio Systems GmbH or of Trucomp GmbH.

**8.4** The Customer is not entitled to copy the products delivered to him or have them copied.

**9 Confidentiality**

**9.1** The Customer will not inform third parties about any EEPD business and operating secrets of which he becomes aware as part of the activities in connection with this contract in any way (including cost estimates, drawings, illustrations and other documentation including possibly software), treat confidentially and not inform third parties without the prior permission of EEPD. Excepted from the confidentiality are facts already known to the public without an infringement of a secrecy obligation or which become known and situations in which the Customer as part of an official request or statutory obligation is obligated to reveal certain facts.

**9.2** The Customer will inform his employees of this obligation to maintain secrecy and remain bound by it also after the performance of the contract for a period of five years.

**10 Miscellaneous**

**10.1** The place of fulfilment is Weichs. The exclusive place of jurisdiction for all disputes arising from this contractual relationship directly or indirectly is Munich. German Law shall apply with the exception of the UN Sales Convention (CISG) of 1980.

**10.2** Should individual provisions in these General Terms and Conditions be or become invalid, this does not affect the validity of the Terms and Conditions overall and also not the validity of the remaining provisions. The same applies to the Individual Contract; the invalid provision is in this instance to be replaced by a regulation which most closely approximates the financial purpose of the invalid provision.

**10.3** Alterations and supplements to these Terms and Conditions and to the Individual Contract must be made in writing. This also applies to the stipulation requiring the written form.