

# GENERAL TERMS AND CONDITIONS OF EPS ELEKTRONIK GmbH & Co. KG

## § 1 General, scope

1) The following terms and conditions govern all contractual agreements between EPS Elektronik GmbH & Co. KG, Am Laddeken 6, 38685 Langelshelm, represented by EPS Elektronik Verwaltungs-GmbH, represented by the Managing Directors Enrik Peter and Christian Reichert, (below referred to as 'EPS Elektronik') and consumers and entrepreneurs (below referred to as 'customer' or 'buyer') who purchase goods or receive services from EPS Elektronik. Decisive is always the version valid at the time of the conclusion of the contract.

2) Consumer in terms of these general terms and conditions shall mean any natural person according to § 13 BGB, who concludes a legal transaction with EPS Elektronik for purposes, which can mainly not be attributed neither his commercial nor his independent professional activity. Entrepreneur in terms of these general terms and conditions is any natural or legal person or a legal partnership pursuant to § 14 BGB, which is concluding a legal transaction with EPS Elektronik in his commercial or independent professional activity.

## § 2 Subject matter of the contract and conclusion of the contract

1) EPS Elektronik offers automotive electronics as new and as fully reconditioned or refurbished replacement equipment, as a service testing and repair of defective equipment.

2) Exchange devices are defective devices that have been repaired or fully reconditioned by us. If in stock they can be delivered immediately. With exchange devices there is no downtime as in case of tests and repairs. For delivery and charging of a fully reconditioned exchange device EPS Elektronik requires to receive the defective, repairable old device within 7 working days (dispatch inside Germany) or 14 working days (dispatch from foreign countries). EPS Elektronik repairs the old device and afterwards holds it in stock for other customers. If EPS Elektronik receives an old device which has a damaged box, is not repairable or only repairable with increased efforts (e.g. burnt, water damages, unqualified attempts of repair) EPS Elektronik has to charge an extra cost which may vary depending on circumstances and will be calculated according to the extra work and extra expenses for procurement. In these cases customers can undo the trade within 7 days upon receipt of the invoice and send the exchange unit back to EPS Elektronik, if the welded clear plastic packaging has not been opened we will immediately reimburse the amount for the exchange device. If the clear plastic packaging has been opened, we cannot rule out an installation of the control device in a vehicle, in which, for example, damage to the control unit can be caused by errors on the vehicle. Since in this case EPS Elektronik cannot re-sell the device unchecked, a testing upon receipt of the returned exchange device is required. Therefore, the reimbursement amount for the exchange unit is reduced by a processing fee and shipping costs.

If the period of 7 days expires without the buyer has expressed his desire to make the trade reversed, we take this as consent of the buyer with the additional cost. The returned device will be repaired or disposed as prescribed by regulations. After this a reverse transaction and return of the device is no longer possible.

3) When purchasing new and exchange devices the contract can only be cancelled by the consumer without compensation for the loss in value when the welded transparent packaging has not been opened, in which the devices are supplied by us. If the clear packaging is opened, for exchange devices costs will arise in the form of a processing fee for the functional testing of the returned device. For new equipment, the difference from the value of an exchange device has to be paid additionally, because the device can no longer be sold as new. Warranty claims for material defects remain unaffected.

4) When buying new devices for which a repairable old device is taken in payment, the following applies additionally: first EPS Elektronik will charge the original price for the device. If EPS Elektronik receives a repairable, old device which has not been opened and is of the same type within 7 working days (dispatch inside Germany) or 14 working days (dispatch from foreign countries) (no fire damages, water damages, no attempts of repair), after a successful incoming inspection EPS Elektronik will pay the amount stated in the invoice.

5) Repairs will be carried out either as full reconditioning or repair of defective parts. In the latter case, the statutory warranty applies for the functions restored by the repair. EPS Elektronik will test the device before repairing it. If this test reveals that the device is not repairable or if EPS Elektronik can not find any defects on the device itself, EPS Elektronik will charge a handling fee for the time and expenses. If a defective

device is repaired by EPS Elektronik this inspection fee will not be charged additionally to the price for the repair.

6) Matter of all inspections are obvious or typical defects of the ECUs. A 100% inspection of electronic components, taking into account all factors and variations in the complex vehicle system is neither technically nor economically feasible in every case. Therefore EPS Elektronik reserves the right to terminate any test at their discretion if it is not possible to localize a defect. In any case EPS Elektronik will have to charge the processing fee for the test which is not cost-covering.

7) Written offers of EPS Elektronik are non-binding in terms of price, delivery and other contents. Verbal agreements or assurances are invalid without a written confirmation.

8) By sending a device or placing a written order the customer agrees to the general terms and conditions of EPS Elektronik and agrees to accept the delivered goods or services. The conclusion of the contract is formed either by a verbally or telephonically placed customer order or by an order confirmation including payment information (payment in advance) or by delivery of goods (cash on delivery) if necessary after inspection or repair. Exchange devices and new devices will be reserved at the time the order confirmation is sent. In cases of payment in advance the payment has to be made within 7 days after receiving the order confirmation. If this is not the case EPS Elektronik will longer maintain a reservation. In these cases EPS Elektronik reserves the right to withdraw from the contract. Verbally placed orders will only be executed on explicit customer's demand or if they are confirmed in writing within 4 working days. For immediate delivery the customer waives a written confirmation. If the customer orders a testing of his device he will receive the test result and an estimate for a repair, if technically feasible and economically reasonable. The repair will not be started before we will have received a written or verbally placed order.

9) The contract can be concluded in German, English and French.

### **§ 3 Cancellation, cancellation period and consequences of cancellation for the delivery of goods and the provision of services, model cancellation form**

Consumers in terms of § 13 BGB have a right to cancel in accordance with the following provisions:

#### **Right to cancel for the delivery of goods**

(1)The customer has the right to cancel his contract within 14 days without giving any reason.

The cancellation period will expire after 14 days from the day on which he acquires, or the third party other than the carrier and indicated by him acquires, physical possession of the goods.

(2)To exercise the right to cancel, he must inform us

EPS Elektronik GmbH & Co. KG

Am Laddeken 6  
D-38685 Langelsheim  
Germany  
Tel: 0049(0)5325-5287840  
Fax : 0049(0)5325-5287841  
E-mail: [info@eps-elektronik.com](mailto:info@eps-elektronik.com)

of his decision to cancel his contract by a clear statement (e.g. a letter sent by post, fax or e-mail). He may use the attached model cancellation form, but it is not obligatory.

To meet the cancellation deadline, it is sufficient for the customer to send his communication concerning his exercise of the right to cancel before the cancellation period has expired.

3) Effects of cancellation: If the customer cancels his contract, we will reimburse to him all payments received from him, including the costs of delivery (except for the supplementary costs arising if he chooses a type of delivery other than the least expensive type of standard delivery offered by us).

We may make a deduction from the reimbursement for loss in value of any goods supplied, if the loss is the result of unnecessary handling by the customer.

We will make the reimbursement without undue delay, and not later than -

a) 14 days after the day we receive back from the customer any goods supplied, or

- b) (if earlier) 14 days after the day he provides evidence that he has returned the goods, or
- c) if there were no goods supplied, 14 days after the day on which we are informed about his decision to cancel his contract.

We will make the reimbursement by the same means of payment as he used for the initial transactions, unless he has expressly agreed otherwise; in any event, he will not incur any fees as a result of the reimbursement.

We may withhold reimbursement until we have received the goods back or the customer has supplied evidence of having sent back the goods, whichever is the earliest.

4) He shall send back the goods or hand them over to us without undue delay and in any event not later than 14 days from the day on which he communicates his cancellation from his contract to us. The deadline is met if he sends back the goods before the period of 14 days has expired. He will have to bear the direct cost of returning the goods.

5) The customer is only liable for any diminished value of the goods resulting from the handling other than what is necessary to establish the nature, characteristics and functioning of the goods.

### **Right to cancel for the provision of services**

6) The customer has the right to cancel his contract within 14 days without giving any reason.

The cancellation period will expire after 14 days from the day of the conclusion of the contract.

7) To exercise the right to cancel, he must inform us

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of his decision to cancel his contract by a clear statement (e.g. a letter sent by post, fax or e-mail). He may use the attached model cancellation form, but it is not obligatory.

To meet the cancellation deadline, it is sufficient for him to send his communication concerning his exercise of the right to cancel before the cancellation period has expired.

8) Effects of cancellation: If the customer cancels his contract, we will reimburse to him all payments received from him, including the costs of delivery (except for the supplementary costs arising if he chooses a type of delivery other than the least expensive type of standard delivery offered by us).

We may make a deduction from the reimbursement for loss in value of any goods supplied, if the loss is the result of unnecessary handling by the customer.

We will make the reimbursement without undue delay, and not later than 14 days after the day on which we are informed about his decision to cancel his contract.

We will make the reimbursement by the same means of payment as the customer used for the initial transactions, unless he has expressly agreed otherwise; in any event, he will not incur any fees as a result of the reimbursement.

9) If the customer requested to begin the performance of services during the cancellation period, he shall pay us an amount which is in proportion to what has been performed until he has communicated us his cancellation from his contract, in comparison with the full coverage of the contract.

### **Model cancellation form**

(If you want to cancel the contract, then please fill out this form and send it back. )

To

EPS Elektronik GmbH & Co. KG

Am Laddeken 6  
D-38685 Langelshiem  
Germany

Fax : +49-5325-5287841  
E-Mail: [info@eps-elektronik.com](mailto:info@eps-elektronik.com)

I / We (\*) hereby give notice that I / we (\*) cancel my / our (\*) contract related to

the sale of the following goods (\*) : / the supply of the following service (\*) :

\_\_\_\_\_

ordered on (\*) : / received on (\*) :

\_\_\_\_\_

Name of the consumer(s) :

\_\_\_\_\_

Address of the consumer(s) :

\_\_\_\_\_

Date :

\_\_\_\_\_

Signature of consumer(s) :  
(only if this form is notified on paper)

\_\_\_\_\_

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(\*) Delete as appropriate

#### **§ 4 Payment, maturity and delayed payment**

- 1) Items are paid according to the payment terms of EPS Elektronik.
- 2) The purchase price has to be paid immediately after the conclusion of the contract. Unless otherwise agreed or displayed on the invoice payments are due immediately as of the billing date net (free of all deductions). Customers may pay cash, in advance (bank transfer, Paypal) or with cash on delivery.
- 3) The payment is delayed if not received at the latest within 30 days after the due date of the demand and receiving the service.
- 4) If the customer is delayed with payment he is liable for any default. He is further liable for accidents as a result of this negligence unless the damage would have also occurred with payment in due time.
- 5) The purchase price is subject to interest during the delay. The annual interest rate for delayed payment is 5 percentage points above the base interest rate. For legal transactions not involving private customers, interest will be charged at 8 percentage points above the interest rate.

6) EPS Elektronik reserves the right to asset claims for further damages.

### **§ 5 Delivery, delivery date, passing of risk**

1) In the absence of specific instructions, transport media and transport routes will be chosen by EPS Elektronik at their discretion. In the standard shipping we ship the item with a carrier of our choice (usually DPD) as an insured package. More information on delivery modes, conditions and costs for standard and express delivery and handling fees is displayed on our website under 'Shipping costs'.

2) Delivery is subject to the conditions of EPS Elektronik. New items and exchange items will be delivered to the provided address immediately. With tests and repairs EPS Elektronik will deliver the items immediately after the service has been finished. Dates for returning items named by EPS Elektronik are non-binding if they have not been confirmed in writing as binding dates. If dates confirmed in writing exceed, the customer may cancel the order. The customer is only entitled to claim a compensation in those cases in which EPS Elektronik is liable for gross negligence and intent. Delays in delivery or wrong delivery do not entitle to claim a compensation, just as little do financial losses or consequential damages.

3) a) Transfer of risk if the customer is private: The risk of accidental loss or accidental depreciation of the goods shall pass to the customer on delivery. If goods are delivered with noticeable transport defects or goods are missing, the customer must not accept these goods. Complaints due to damages in transport must be claimed immediately by the customer against the transport company within the specified deadline.

b) Transfer of risk if the customer is an entrepreneur: The risk of accidental loss or accidental depreciation of the goods passes to the customer as soon as EPS Elektronik delivered the object of purchase to the carrier or the person/ agent designated to execute the delivery.

### **§ 6 Reservation of title**

1) The object of purchase remains property of EPS Elektronik until full payment was made (extended retention of title). Before transfer of ownership, the customer is not entitled to pledge, assign as security, process or redesign the item without explicit consent of EPS Elektronik.

### **§ 7 Prices**

1) For private customers: the indicated prices are final prices, including VAT or other components of the final price. Shipping fees are not included in the stated price and will be charged in addition.

2) For companies: catalogue prices and list prices are non-binding. Prices valid at the date of delivery will be charged. Fixing prices is on condition of constant buying prices, wages, taxes and other costs. Any circumstances that can change the costs between the conclusion of the contract and delivery entitle EPS Elektronik to adjust prices, even retrospectively.

3) For exchange devices the agreed prices are valid, if the defective device is sent in exchange to EPS Elektronik at the latest within 7 working days (dispatch inside Germany) or 14 working days (dispatch from foreign countries) after receipt of the exchange device. The devices have to be sent in an insured parcel. At the discretion of EPS Elektronik a deposit for the exchange unit can be collected until the arrival of the old unit, the amount of which depends on the type of the device. This deposit will be refunded immediately after the undamaged and not opened old device has arrived at EPS Elektronik. If no deposit has been collected and if the period of 7 working days (dispatch from Germany) or 14 working days (dispatch from all other countries) is exceeded, EPS Elektronik is entitled to claim for compensation an amount of 30 EUR. If EPS Elektronik has not received the device after 30 days, they are entitled to claim for compensation an additional amount which will be equal to the deposit amount. If EPS Elektronik receives an old device which has a damaged box, is not repairable or only repairable with increased efforts (e.g. burnt, water damages, unqualified attempts of repair) EPS Elektronik has to charge an extra cost which may vary depending on circumstances and will be calculated according to the extra work and extra expenses for procurement. In these cases customers can undo the trade within 7 days upon receipt of the invoice and send the exchange unit back to EPS Elektronik, if the welded clear plastic packaging has not been opened we will immediately reimburse the amount for the exchange device. If the clear plastic packaging has been opened, we cannot rule out an installation of the control device in a vehicle, in which, for example, damage to the control unit can be caused by errors on the vehicle. Since in this case EPS Elektronik cannot re-sell the device unchecked, a testing upon receipt of the returned exchange device is required. Therefore, the reimbursement amount for

the exchange unit is reduced by a processing fee and shipping costs. If the period of 7 days expires without the buyer has expressed his desire to make the trade reversed, we take this as consent of the buyer with the additional cost. The returned device will be repaired or disposed as prescribed by regulations. After this a reverse transaction and return of the device is no longer possible.

4) For testing EPS Elektronik charges a handling fee for opening, examining or testing the device. This fee will be charged in any case even if EPS Elektronik can not find a defect of the device.

5) ABS control units should be sent for testing, repair or exchange without the hydraulic unit, since the weight of the hydraulic unit may cause transport damages to the control unit. EPS Elektronik is not liable for these damages. If yet the hydraulic unit is sent, EPS Elektronik additionally charges 20 € due to the additional workload. Before sending hydraulic units these must be sealed to protect them from pollution. Hydraulic units that have not properly been sealed are no longer suitable for reassembly into the vehicle.

### **§ 8 Withdrawal**

1) EPS Elektronik is entitled to withdraw from the contract, including the case that part delivery has been made or is outstanding, if false information about the customer's financial capacity has been supplied or apparent reasons for the customer's financial incapacity have arisen (e.g. institution of insolvency or bankruptcy proceedings against the customer's assets or rejection of a respective application due to lack of funds). Before withdrawal, the customer is granted the option of depositing a payment in advance or providing a security.

2) Notwithstanding any claims for compensation, partial performances already made are to be charged and paid for according to contract in case of a partial withdrawal.

### **§ 9 Warranty**

1) There are statutory warranty rights for all goods and services offered on our website.

2) Warranty for consumers: a) EPS Elektronik guarantees that the object of purchase will be free of defects at handover. If a fault shows within 6 months after delivery, it will be presumed that the product had been faulty at the time of handing over, unless such assumption is incompatible with the nature of the item or the defect. If the fault becomes apparent after the expiration of 6 months, the customer must demonstrate and prove the product was defective at the time of delivery.

b) If the product is defective, the customer has the right to choose between the contract's fulfilment by repair of the product or by replacement of the product. EPS Elektronik is entitled to refuse the chosen type of fulfilment if it is only achievable with unreasonable costs and does not lead to considerable disadvantages to the customer.

c) If the subsequent performance fails, the customer may generally demand either a reduction of the purchase price (decrease), a cancellation of the contract (rescission) or he can demand for compensation. If a reconditioned device is purchased a cancellation of the contract is not possible, if the exchange device delivered by the customer was already disposed or sold. The customer has no right to withdraw from the contract in case of minor defects.

3) Warranty for entrepreneurs: a) Should the purchase for both parties be a commercial transaction, the customer has to inspect the goods immediately after receipt by regarding deviations from specified condition and amount. EPS Elektronik must be informed by the customer of visible defects or deviations within one week after receipt of goods in writing. Else the assertion of the warranty claim is excluded. Notification of any hidden defects must be made in writing within one week after their detection. Punctual dispatch suffices to keep the deadline. In this case the customer will have to prove all conditions for his claims under statutory rights, in particular the specific fault itself, the time of the discovery and the timeliness of the fault reporting.

b) In case of defects EPS Elektronik guarantees to either repair the item or deliver a replacement item.

c) The customer's claims regarding defects are time-barred within one year.

4) If for the purpose of subsequent performance EPS Elektronik delivers an item free of defects, EPS Elektronik can require a back guarantee of the defective item.

5) Defects that have been caused by the customer through improper use or use contrary to contract during installation, connection appliance or storage do not justify any claims against EPS Elektronik.

6) The statutory warranty applies to fully reconditioned exchange devices and to repairs with full reconditioning to ensure proper function of the device, for repairs proper function of the repaired components. Excluded are damages caused by water, fire and/or oil, improper installation, defects on the

vehicle, external impact etc. Any claims against this warranty will decline if the device is opened or if the seals are broken.

### **§ 10 Liability limitations**

1) EPS Elektronik is liable for any damage other than damage resulting from personal injury or death only to the extent that such damage results from wilful misconduct or gross negligence or from the violation of an essential contractual obligation attributable to EPS Elektronik or to any of their employees. Contractual obligations are obligations which fulfil the adequate implementation of the contract on which the customer may continuously rely on. Any further liability for compensation of damages is excluded. Claims for a warranty for the condition of the item and the product liability remain untouched.

2) EPS Elektronik is in particular not liable for the assembly and disassembly or consequential damage on the vehicle, the usability of the vehicle, its historical or personal value.

3) During a repair or test, damaged components might get destroyed and make it impossible to repair the control unit. In these cases EPS Elektronik does not assume any liability.

4) According to the current state of technology data communication via internet can not be guaranteed at any time. Therefore EPS Elektronik does not assume any liability for the availability of our goods on the marketplace eBay or on our website [www.eps-elektronik.com](http://www.eps-elektronik.com).

### **§ 11 Law applicable, place of jurisdiction**

1) All disputes from this legal relationship are defected by the right of the Federal Republic of Germany. For private customers this choice of law applies to the extent that the granted protection is not withdrawn by imperative provisions of the law of the country, or state, the customer usually resides in. The validity of UN-purchase right is excluded.

2) If the customer is entrepreneur, legal person of public law or special fund under public law, the place of jurisdiction for all disputes resulting from this contract is exclusively the registered office of EPS Elektronik. The same applies if the customer has no place of general jurisdiction in Germany or if its place of residence or its whereabouts are unknown at the time of lodging the claim.

### **§ 12 Severability Clause**

1) Should a provision of these General Terms and Conditions be or become invalid, all other provisions of these terms or any further agreements shall remain in full force and effect, unless the elimination of individual provisions discriminates either contract party to an unacceptable extent, so the adherence of the contract becomes unacceptable.

End of GTC, last valid version 24.06.2014.