

# Terms and Conditions of Sale

## EBV Elektronik

**The sale of products and services (“Products”) by EBV Elektronik GmbH and its divisions, subsidiaries, and affiliates (“EBV”) are subject to these terms and conditions (“Agreement”) regardless of other or additional terms or conditions that conflict with or contradict this Agreement in any purchase order, document, or other communication (“Order”). Preprinted terms and conditions on any document of customer (“Customer”) (for example: Orders or confirmations) and/or EBV’s failure to object to conflicting or additional terms will not change or add to the terms of this Agreement.**

### 1. ORDERS

Quotes from EBV are invitations to tender and are subject to change at any time without notice. All Orders are subject to acceptance by EBV. Contracts between Customer and EBV are formed upon EBV’s written acceptance or execution of Customer’s Order and shall be subject to this Agreement. All Orders including, but not limited to, Electronic Purchase Orders, for Products identified by EBV as non-standard or “NCNR”, are non-cancelable, non-reschedulable. EBV may identify Products as non-standard or “NCNR” by various means including, but not limited to, quotes, Scope of Services, Products lists, attachments or exhibits. Customer may not change, cancel or reschedule Orders for standard Products without EBV’s consent. EBV reserves the right to allocate the sale of Products among its customers.

### 2. PRICES

Prices are subject to change at any time. Prices are for Products only and do not include taxes, shipping charges, freight, duties, and other charges or fees, such as fees for special packaging and labeling of the Products, permits, certificates, customs declarations and registration (collectively, “Additional Fees”). Customer is responsible for any Additional Fees.

### 3. TERMS OF PAYMENT

Payment of the total invoice amount, without offset or deduction, is due 30 days from the invoice date or as otherwise approved in writing by EBV. On any past due invoice, EBV may charge (i) interest from the payment due date to the date of payment at 18% per annum, plus reasonable attorney fees and collection costs; or (ii) the maximum amount that is allowed under the applicable law if EBV’s interest rate is deemed invalid. At any time, EBV may change the terms of Customer’s credit, require financial data from Customer for verification of Customer’s creditworthiness, require a bank guarantee or other security, or suspend any outstanding Orders of Customer. EBV may apply payments to any of Customer’s accounts. If Customer defaults on any payment under this Agreement, EBV may reschedule or cancel any outstanding delivery and declare all outstanding invoices due and payable immediately. Unless otherwise provided by applicable law, any credit issued by EBV to Customer in respect of any of Customer’s accounts will expire if unused for twelve (12) months following the date of issuance of such credit.

### 4. DELIVERY AND TITLE

Unless otherwise specified by EBV in writing, all deliveries by EBV are EXW EBV’s warehouse (INCOTERMS 2000). Title and risk of loss pass to Customer upon delivery of the Products to the carrier. EBV’s delivery dates are estimates only and subject to timely receipt of supplies by EBV. EBV is not liable for delays in delivery. EBV reserves the right to make partial deliveries and Customer will accept delivery and pay for the Products delivered. A delayed delivery of any part of an Order does not entitle Customer to cancel other deliveries.

### 5. EBV’S LIMITED WARRANTY

EBV will pass through to Customer any transferable Product warranties, indemnities, and remedies provided to EBV by the manufacturer, including any warranties and indemnities for intellectual property infringement. If required by law, EBV



warrants that at the time of delivery, the Products shall have the specifications stated by the manufacturer in its published data sheet for the Products for 12 months from delivery of Products. EBV warrants that for a period of 90 days after delivery of the Products to Customer, value-added work performed by EBV on Products will conform to Customer's specifications that are in writing and accepted by EBV, and Customer shall be deemed the manufacturer of such value-added Products. To the extent permitted by law, EBV makes no other warranty, express or implied, such as warranty of merchantability, fitness for purpose or non-infringement. Customer's sole remedies for breach of EBV's warranty are, at EBV's choice: (i) repair the Products; (ii) replace the Products at no cost to Customer; or (iii) refund Customer the purchase price of the Products.

## 6. PRODUCT RETURN

Customer may return Products to EBV only with a return material authorization ("RMA") number issued by EBV. Customer must notify EBV in writing of any damage to the outer packaging or the Products, shortage, or other discrepancy ("Visual Defect") within 3 days after receipt of the shipment; otherwise, Customer is deemed to have accepted the Products and may not revoke acceptance. RMAs will be issued only for Visual Defects created solely by EBV or the original manufacturer, and only if Customer satisfies the notice requirement. RMAs will not be granted for damage, shortage, or other discrepancy created by Customer, the carrier or freight provider, or any other third party. Product return pursuant to a warranty requires written notice from Customer to EBV within the warranty period detailing the Product defect. Customer must return the Products to EBV freight prepaid in original manufacturer's shipping cartons or equivalent, along with acceptable proof of purchase, within the warranty period and as specified in the RMA. At EBV's discretion, EBV will return all Products not eligible for return to Customer, freight collect, or hold Product for Customer's account at Customer's expense.

## 7. LIMITATION OF LIABILITY

To the extent permitted by law, neither EBV nor its employees or agents are liable for and customer is not entitled to any indirect, special, incidental or consequential damages; for example, loss of profits or revenue, loss of data, loss of use, rework, manufacturing expense, injury to reputation, or loss of customers. To the extent permitted by applicable law, Customer's recovery from EBV for any direct damages will not exceed the price of the Product at issue. To the extent the preceding limitation of liability is deemed invalid under

applicable law, EBV's total liability in any event will not exceed USD 50,000 or the equivalent thereof. Customer will indemnify, defend and hold EBV harmless from any claims based on; (i) EBV's compliance with customer's designs, specifications, or instructions, (ii) modification of any Product by anyone other than EBV, or (iii) use of Products in combination with other products or in violation of clause 9 below.

## 8. FORCES BEYOND EBV'S CONTROL

EBV is not liable for failure to fulfill its obligations under this Agreement due to causes beyond its reasonable control, (for example: acts of nature, acts or omissions of the Customer, operational disruptions, man-made or natural disasters, epidemic medical crises, materials shortages, strikes, criminal acts, delays in delivery or transportation, or inability to obtain labor or materials through its regular sources).

## 9. USE OF PRODUCTS

Customer shall comply with the manufacturer's or supplier's Product specifications. Products are not authorized for use in critical safety or other applications where a failure may reasonably be expected to result in personal injury, loss of life, or serious property damage. If Customer uses or sells the Products for use in any such applications or fails to comply with the manufacturer's Product specifications, Customer acknowledges that such use, sale, or non-compliance is at Customer's sole risk.

## 10. EXPORT/IMPORT

Certain Products sold by EBV and other related technology and documentation are subject to export control laws, regulations and orders of the United States, the European Union, and/or other countries ("Export Laws"). Customer shall comply with such Export Laws and obtain any license, permit, or authorization required to transfer, sell, export, re-export, or import the Products and related technology and documentation.

## 11. PRODUCT INFORMATION

Product information (for example, statements or advice (technical or otherwise) advertisement content, and information related to a Product's specifications, features, export/import control classifications, uses or conformance with legal or other requirements) is provided by EBV on an

“AS IS” basis and does not form a part of the properties of the Product. EBV makes no representation as to the accuracy or completeness of the Product information, and DISCLAIMS ALL REPRESENTATIONS, WARRANTIES AND LIABILITIES UNDER ANY THEORY WITH RESPECT TO THE PRODUCT INFORMATION. EBV recommends Customer validate any Product Information before using or acting on such information. All Product information is subject to change without notice. EBV is not responsible for typographical or other errors or omissions in Product information.

## 12. ELECTRONIC ORDERS

In the event that any part of the purchase and sale of Products, including Customer’s NCNR acknowledgment, utilizes electronic data interchange, Customer’s internal portal or third party portal, or any other electronic means (“Electronic Purchase Order”), this Agreement will continue to apply to the purchase and sale of Products between Customer and EBV. Customer’s acceptance of EBV’s acknowledgment request or EBV’s specification of details with respect to Electronic Purchase Orders via writing, email or other electronic data interchange shall be binding on Customer.

## 13. GENERAL

- This Agreement shall be governed, construed, and enforced in accordance with the laws of the country where the EBV entity that accepted Customer’s Order (“Governing Country”) is located. The courts of the Governing Country shall have jurisdiction and venue over all controversies arising out of, or relating to, this Agreement. If the Governing Country is the United States of America, the laws and courts of the State of Arizona will apply without reference to Arizona’s conflict of laws principles. The United Nations Convention for the International Sale of Goods shall not apply.
- Customer may not assign this Agreement without the prior written consent of EBV, and EBV’s affiliates may perform EBV’s obligations under this Agreement. This Agreement is binding on successors and assigns.
- This Agreement can only be modified in writing signed by authorized representatives of both EBV and Customer.
- EBV and Customer are independent contractors and agree that this Agreement does not establish a joint venture, agency relationship, or partnership.
- EBV’s failure to object to any document, communication, or act of Customer will not be deemed a waiver of any of these terms and conditions.
- The unenforceability of any of these terms or conditions will not affect the remainder of the terms or conditions.

- Products, including software or other intellectual property, are subject to any applicable rights of third parties, such as patents, copyrights and/or user licenses, and Customer will comply with such rights.
- Customer and EBV will comply with applicable laws and regulations.