

# BRAND GMBH + CO KG General Terms and Conditions for orders from outside shop.brand.de

## 1. General

- 1.1 These General Terms and Conditions (GTC) for orders outside shop.brand.de of BRAND GmbH + CO KG ("BRAND") are intended only for use in business transactions with entrepreneurs.
- 1.2 These GTC shall apply for all, including future, contracts with the customer, except for online business via shop.brand.de/en/. Other terms and conditions shall not become part of the contract, even if BRAND does not expressly object to them. Amendments to and changes of the contract must be in written form. The waiver of the requirement for written form shall only be possible in writing. This shall not apply to individual contractual agreements. The language of the contract shall be German and/ or English. In the event of a discrepancy between the German language version of these GTC and a version in any language, the German language version shall prevail.
- 1.3 BRAND offers are subject to change and non-binding. BRAND reserves the right to make technical improvements to BRAND products.
- 1.4 BRAND may electronically store and process the data required for the execution of the contract. Further information on data protection is contained in the data protection declaration <https://www.brand.de/en/privacy-statement>.
- 1.5 A set-off by the customer shall not be permitted unless the counterclaims are undisputed or legally established, or pecuniary counterclaims arising from the right to refuse payment pursuant to Section 320 Bürgerliches Gesetzbuch (BGB) (German Civil Code).
- 1.6 Orders with a goods value of below € 250 shall be subject to a minimum order surcharge of € 50. Delivery shall be undertaken generally in packaging units (PU) according to the currently valid price list. For deliveries within five (5) working days or for order values up to € 500, BRAND reserves the right to waive an order confirmation.
- 1.7 For commercial transactions with customers having no general place of jurisdiction in Germany and between businesses, public law legal persons or special funds under public law the place of jurisdiction shall be the court responsible in Frankfurt am Main, Germany. BRAND shall also be entitled to appeal to the court responsible for the head office of the customer. BRAND shall, furthermore, as plaintiff have the right to invoke the Arbitration Court at the Chamber of Commerce and Industry in Frankfurt am Main, Germany. The Arbitration Court shall, in this case, make the final judgment in accordance with the Rules of Arbitration of the Chamber of Commerce and Industry in Frankfurt am Main without recourse to the ordinary courts of law. The instigation of legal dunning proceedings by BRAND shall not signify the exertion of its right of choice; it shall be admissible in all cases.
- 1.8 German law shall apply exclusively under the exclusion of the conflict of laws principles of Private International Law and the UN Convention on Contracts for the International Sale of Goods (CISG).

## 2. Delivery

- 2.1 The place of performance is BRAND's factory in Wertheim, Germany. The risk is transferred to the customer as soon as the goods have been packed and loaded for transport (FCA Wertheim (Incoterms® 2020 free carrier)), even if partial deliveries are made or if BRAND provides other services (e.g. dispatch, transport, packaging or insurance costs, export, or installation). This also applies in the case of delivery to a consignment warehouse at the customer.
- 2.2 Insofar as BRAND has agreed to orders on call, the customer must take delivery prior to the agreed date, otherwise within six (6) months.

## 3. Delivery Period, Force Majeure, Delay

- 3.1 Delivery times shall be ex works. Delivery periods or delivery dates are subject to the customer providing relevant information and documents such as drawings, permits or approvals, opening letters of credit as agreed, making agreed advanced payments and complying with any obligation on time. In particular, the customer is obliged to immediately provide all information required for export, import or shipment (e.g. final recipient, final destination and intended use), documents, approvals and certificates which may be required for the fulfillment of BRAND's obligations. If delays occur due to required approval, examination or information procedures, delivery periods and delivery dates shall be extended accordingly if BRAND is not solely responsible for the delay.
- 3.2 Delivery shall be subject to BRAND receiving its own supplies punctually and in good order.
- 3.3 If non-compliance with delivery periods are due to force majeure (e.g., natural disasters, pandemics, mobilization, war, or riot) or similar events beyond BRAND's control (e.g. strikes or lockouts), the delivery periods shall be extended by the periods during which the aforementioned event or its effects persist.
- 3.4 BRAND shall immediately inform the customer about delivery barriers or delays and their expected duration.
- 3.5 BRAND shall be considered to be in default of delivery only if the customer has issued BRAND with a reminder, has set a reasonable extension period which has elapsed. The customer shall be obliged to immediately inform BRAND in writing of any likely consequences of delay.
- 3.6 In the case of delay damages, BRAND's liability for compensation shall be limited to 10% of the value of the delayed delivery/ service. The limitation shall not apply in cases of wilful intent, gross negligence and/ or injury to life, limb or health.

## 4. Prices, Terms of Payment

- 4.1 Prices shall be FCA (Incoterms® 2020 free carrier), Wertheim and exclusive of statutory value added tax, if applicable. Costs for packaging as well as transport, freight, and insurance shall be borne by the customer. The cost of returning products for maintenance or disposal will not be covered.
- 4.2 Invoices shall be payable to BRAND account in EUROs (€) without deductions and free of charges and expenses. Payment shall be made immediately or by the date stated. The determinant factor shall be the receipt of payment. Cheques and bills of exchange shall only be accepted on account of performance and at the cost of the customer.
- 4.3 In the case of customers, with whom BRAND is working for the first time or with whom BRAND does not work regularly, after delay in payment or in the case of reasonable doubt as to the creditworthiness of the customer, BRAND shall reserve the right to make individual deliveries dependent on a pre-payment or a security deposit to the value of the invoice amount.
- 4.4 Should the period between conclusion of contract and agreed delivery exceed four (4) months, so may BRAND, at its discretion, demand a reasonable additional charge equivalent to the increase in its costs up until delivery.
- 4.5 In the case of an agreed return of goods that are free of defects, the customer shall be charged a checking and processing fee of 20% of the invoice amount (minimum € 50).
- 4.6 Should the customer be in arrears with payment, BRAND debt claims against him shall be due immediately, and BRAND shall not be obliged to make any further deliveries based on current delivery contracts.
- 4.7 If payment is delayed, BRAND shall charge - notwithstanding further damage compensation claims - interest on arrears at the statutory rate.
- 4.8 BRAND may offset amounts payable to the customer (e.g. from credit notes) against BRAND claims against the customer.

## 5. Retention of Title, Assignment of Future Claims

- 5.1 The goods delivered shall remain property of BRAND until the complete and unconditional payment. Should BRAND still have further claims against the customer arising from the business relationship, BRAND shall then retain its property rights until payment of such claims has been effected.
- 5.2 The customer may neither use goods subject to retention of title nor combine them with other objects to which a third party may have rights. Should, however, goods subject to retention of title become, through their combination with other objects, part of a new (complete) item, BRAND shall be a proportional co-owner of this new item directly, even if this latter component is regarded as the main component. BRAND's proportion of co-ownership shall be determined by the ratio of the invoice value of the goods to the value of the new item at the time of combination.
- 5.3 The customer may resell goods subject to retention of title in the course of his normal business as long as he has not assigned, pledged or otherwise encumbered his claims from the resale.
- 5.4 The customer shall assign to BRAND in advance as collateral any claims against his customers from the resale of the goods subject to retention of title (see Clause 5.3) and/or newly formed items (see Clause 5.2) to the value of BRAND's invoice for the goods subject to retention of title. As long as the customer is not in default of payment for the goods subject to retention of title, he may collect the assigned claims in the ordinary course of business. He may, however, only use the proportional proceeds for the payment to BRAND for the goods subject to retention of title.
- 5.5 At the customer's request, BRAND will release collateral at its discretion if and to the extent that their value exceeds the claim to be secured by more than 20%.

- 5.6 The customer shall be required to inform BRAND immediately of any attachments, seizures or any other third-party dispositions relating to the goods that are reserved or co-owned by BRAND.
- 5.7 In the event of delay in payment, failure to pay bills of exchange or cheques, or failure or recall of a payment made via SEPA Direct Debit Scheme, suspension of payments or insolvency of the customer or of the end buyer, the rights of the customer under Clause 5.3 shall no longer be valid. The customer must then immediately inform the buyer of BRAND's extended retention of title; he may use the proportional proceeds relating to the assignment only to pay for the delivered goods. BRAND shall be entitled to collect the assigned receivables itself.
- 5.8 In the event of customer's culpable breach of contractual obligations, in particular for the cases covered in Clause 5.7, BRAND shall be entitled to withdraw from the contract and/ or, without withdrawing from the contract, demand the return of any goods subject to retention of title still in possession of the customer and to collect the assigned receivables itself. In order to ascertain the rights of BRAND, BRAND shall be entitled to have all of customer's documents/ books concerning the reserved rights of BRAND examined by a person who is subject to the professional duty of confidentiality.

## 6. Warranty, Limitation of Liability

- 6.1 BRAND warrants that its delivered goods (including any agreed installation) are free of defects at time of risk transfer. The condition owed, durability, and use of the deliverables is based on the specification, product description, and/or operating instructions agreed upon.
- 6.2 Should the customer require the delivered goods for purposes other than those agreed, he must take responsibility himself for examining their special suitability for this - also in terms of product safety - and ensure their compliance with all relevant technical, legal or regulatory provisions before the intended use. BRAND excludes liability for any usability not confirmed by BRAND. In the case of material or design requirements of the customer, BRAND shall accept no liability for the suitability or permissibility of the desired materials or designs. Compliance with safety-related and occupational health regulations depends on the location and operating conditions of which BRAND has no prior knowledge. Action for ensuring compliance shall therefore be the responsibility of the customer or his buyer.
- 6.3 BRAND shall not be liable for the consequences of improper handling, use, maintenance and operation of the delivered goods; the consequences of normal wear and tear, in particular of wearing parts, such as pistons, seals, valves; the breakage of glass, plastic or ceramic parts; for the consequences of chemical, electrochemical or electrical influences; or non-observance of the operating instructions.
- 6.4 If a notice of defect is justified, BRAND shall initially only be required to provide cure. Any such cure shall be, at the discretion of BRAND, either rectification of the defect or delivery of goods free of defects. Further warranty claims shall only apply in the event of rejection, impossibility or failure of the cure.
- 6.5 The customer must, immediately upon receipt of the goods, inspect them carefully, also in terms of product safety, and notify obvious defects immediately in writing; any hidden defects must be immediately notified upon discovery. The customer must notify the carrier immediately of any transport damage. Failure to observe the testing and notification obligation shall void any customer claims for defects.
- 6.6 BRAND's liability for slight negligence shall be limited to claims for injury to life, limb or health, to claims under the Produkthaftungsgesetz (German Product Liability Act) or to claims of culpable breach of fundamental contractual obligations through which the purpose of the contract is endangered. Otherwise, its liability for slightly negligent breach of fundamental contractual obligations is limited to the typically occurring damages which BRAND could have foreseen when the contract was concluded.
- 6.7 Should the customer use the delivered goods in conjunction with environmentally harmful, toxic, radioactive or otherwise hazardous materials, he must notify BRAND about any such materials and decontaminate the delivered goods prior to returning them to BRAND. If the customer does not clean the goods according to the declaration of no health risk, BRAND may charge the customer for the costs required for the decontamination/cleaning and disposal of the hazardous substances arising in the process. If the device cannot be decontaminated/cleaned even by BRAND because of existing health hazards for the employees depending on the type of hazardous substances, the entire device must be disposed of as hazardous waste. The costs incurred for this shall be the responsibility of the customer.

## 7. Limitation Period

The warranty period shall be one year and starts from the date of delivery of the goods to the customer. The same shall apply for claims for damages, irrespective of their legal basis. The limitation periods of Section 438 Para. 1 Nos. 1 and 2and Section 634a Para. 1 No. 2 of the BGB (German Civil Code) shall remain unaffected. The warranty period for any rights of recourse pursuant to Section 445a BGB (German Civil Code) shall be one year and starts from the date of delivery of the goods to the customer. The restrictions of the limitation periods shall not apply to claims based on fraudulent concealment of a defect, for claims under the Produkthaftungsgesetz (German Product Liability Act) or for damages resulting from injury to life, limb or health and other damages based on intent or gross negligence. The limitation period in respect of replaced or repaired goods shall only commence anew if BRAND admitted the defectiveness of the replaced or repaired goods.

## 8. Software Use

- 8.1 If software is included in the scope of a delivery, the customer shall be granted a non-exclusive right to use the software and its associated documentation. It is provided for use on the designated delivery item. The use of the software on more than one system shall be prohibited.
- 8.2 The customer shall only be entitled to copy, transfer or translate the software or to convert it from object code to source code to the extent permitted by law (Sections 69a et seq. Urheberrechtsgesetz - German Copyright Act). The customer undertakes to refrain from removing manufacturer information, in particular copyright notices, or from changing these without BRAND's prior express consent or the prior express consent of the software supplier.
- 8.3 All other rights to the software and the documentation including copies thereof shall remain with BRAND and/ or the software supplier. The issue of sublicenses is not permitted.

## 9. Installation

- 9.1 Installation costs may be invoiced on a monthly basis. Fixed installation prices shall only cover the work that has been agreed upon.
- 9.2 The customer shall be responsible for providing the following at his own expense: lighting, motive power, if necessary, compressed air; water; electrical power for welding and heating, including the necessary connections; electrical installations to connect the products supplied by BRAND; the devices required (such as lifting equipment); a lockable room that can be used for storing materials; tools and clothing during the installation.

## 10. Spare Parts, Maintenance/Repair and Calibration

- 10.1 For spare parts and maintenance, repair and calibration services, the current repair and exchange price list shall apply.
- 10.2 Insofar as there is an obligation on the part of BRAND to maintain/supply spare parts, then this obligation shall be limited to a period of five (5) years from the date of delivery. If spare parts are not manufactured by BRAND, or are no longer available on the market, for example electronic components, or if the raw material for their production is no longer available, the obligation of BRAND to deliver spare parts shall lapse.
- 10.3 For calibration and maintenance, expendable items from BRAND production are normally used.
- 10.4 Maintenance and calibration services can only be provided if the customer has declared the devices sent to be safe to work on from a health hazard perspective.
- 10.5 For repair/service values of up to € 50, BRAND reserves the right not to provide a separate cost estimate.

## 11. Legal Reservation, Industrial Property Rights, Confidentiality

- 11.1 BRAND reserves ownership and all industrial property rights and copyrights to all molds, tools or other devices, samples, pictures, and business and technical documents produced or provided by BRAND. This also applies where the customer has wholly or in part taken on the costs hereof. The customer may use these only in the manner agreed with BRAND. Without BRAND's written consent, the customer may not himself manufacture contractual objects delivered or have the same manufactured by third parties.
- 11.2 Insofar as BRAND delivers goods according to the designs or other requirements specified by the customer (models, patterns etc.), the customer shall be liable to BRAND by default for ensuring that, through the manufacture and delivery of these goods, the industrial property rights or other rights of third parties are not infringed. If the customer is at fault he shall reimburse BRAND all damage resulting from any such infringement of rights.
- 11.3 Any information acquired from this business relationship and not deemed to be public knowledge must not be disclosed by the customer to third parties.

Last updated: April 2022