

# General Terms and Conditions of Business of BRAND GMBH + CO KG for Business Transactions with Companies via the Online Shop

## 1 General

- 1.1 These General Terms and Conditions of Business are intended only for use in business transactions with companies (Section 14 of the German Civil Code (BGB)). An entrepreneur is a natural or legal person or a partnership with legal capacity who, when concluding a legal transaction, acts in the exercise of his commercial or independent professional activity.
- 1.2 These General Terms and Conditions of Business apply to all contracts with the Customer that are brought about via the Online Shop of BRAND GMBH + CO KG ("BRAND") under <https://shop.brand.de> (hereinafter the Online Shop). Other conditions shall not become part of the contract, even if BRAND does not expressly object to them. Amendments and supplements to the contract must be in writing in order to be valid. The written form requirement itself may only be waived in writing. This does not apply to individual contractual agreements.
- 1.3 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 privacy statement, which can be found at <https://www.brand.de/en/privacy-statement>.
- 1.4 Offsetting by the Customer is not permitted unless offsetting involves undisputed or res judicata counter-claims or counter-claims for payment resulting from the right to refuse service according to Section 320, BGB.
- 1.5 The place of jurisdiction for transactions with customers that do not have a general place of jurisdiction within Germany, merchants as well as with legal persons under public law or public law special funds shall be Frankfurt am Main. BRAND is also entitled to appeal to the court responsible for the Customer's place of business. Furthermore, BRAND, as plaintiff, has the right to appeal to the arbitration court at the Chamber of Industry and Commerce (IHK) Frankfurt am Main. In this case, the arbitration court shall make a final decision on the dispute according to the rules of arbitration of the IHK Frankfurt am Main, excluding ordinary legal proceedings.
- 1.6 The law of the Federal Republic of Germany shall apply without restriction, under exclusion of the conflict-of-law rules of international private law, as well as the United Nations Convention on Contracts for the International Sale of Goods (CISG).

## 2 Conclusion of contract

- 2.1 The offers presented in the Online Shop are subject to change and are not offers in the legal sense. They merely represent an invitation for the Customer to submit an offer.
- 2.2 Purchases are made exclusively to companies. The creation of a customer account is required for purchases via the online store. The customer assures that the data provided during registration is accurate and complete.
- 2.3 By clicking the "Buy now" button, the Customer can place the respective goods in the virtual shopping basket. This process is still non-binding and does not constitute a contract offer. Before an order is placed, the content of the order, including the Customer data, is summarized on an overview page. All order data can be corrected there using the change fields provided.
- 2.4 By clicking on the "Order subject to payment" field, the Customer submits a binding offer to conclude a purchase contract.
- 2.5 After placing the order, the Customer receives an automatically generated email confirming receipt of the order by BRAND and stating its details (confirmation of receipt). This confirmation of receipt shall not constitute acceptance of the contract. The contract shall only be brought about by sending a confirmation email or delivery of the goods. If we do not accept your offer, we will inform you of this in electronic form.
- 2.6 These General Terms and Conditions of Business can be saved or printed at any time by clicking on the "Save" or "Print" button. The content of the order can be saved and/or printed immediately after placing the order and can also be viewed later at any time via the "My Account" function.

## 3 Delivery

- 3.1 Shipping takes place within the countries of the European Union, the European Free Trade Association (EFTA) and the United Kingdom. Shipping outside these countries is excluded.
- 3.2 The place of performance is BRAND's factory in Wertheim. Risk passes to the Customer as soon as the delivery has been packed and loaded for dispatch. Unless an agreement to the contrary has been made, delivery shall be made CIP (Incoterms® 2020 carriage and insurance paid to).
- 3.3 Partial deliveries are excluded.

## 4 Delivery Period, Force Majeure, Delay

- 4.1 Delivery times are ex works. Delivery periods or delivery dates are subject to the Customer making agreed advance payments and fulfilling all other obligations incumbent on the Customer in good 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) as well as documents, permits, and certificates that may be necessary for BRAND to fulfill its obligations. In the case of delays in necessary approval, inspection, or information procedures, delivery periods and dates will be extended accordingly unless BRAND is solely responsible for the delay.
- 4.2 We reserve the right to correct and timely self-deliver.
- 4.3 If non-compliance with deadlines is due to force majeure (e.g. natural disasters, pandemics, mobilization, war, or riot) or similar events for which BRAND is not responsible (e.g. strikes or lockouts), the deadlines shall be extended by the periods during which the aforementioned event or its effects persist.
- 4.4 BRAND shall inform the Customer immediately about delivery obstacles or delays and their expected duration.
- 4.5 Delay in delivery requires in any case a reminder from the Customer with an appropriate grace period and the expiry of this grace period. The Customer must inform BRAND immediately in writing of any impending consequences of default.
- 4.6 In the event of damage caused by delay, liability for damages shall be limited to 10% of the value of the delayed delivery/service. This limitation shall not apply in the event of intent, gross negligence, and/or injury to life, body, or health.

## 5 Prices, Terms of Payment

- 5.1 The prices stated in the Online Shop are exclusive of any statutory VAT that may be due. A flat shipping fee (packaging included) will be charged in addition for orders under EUR 400/ GBP 650/ CHF 650. The flat-rate shipping fee is stated separately in the Online Shop before the order is sent. The cost of the return transport of products for maintenance or disposal will not be assumed.
- 5.2 The following payment methods are available in our Online Shop:

### Credit card

Accepted credit cards are MasterCard or VISA. Payment is processed by BS Payone GmbH, Frankfurt am Main.

### PayPal (not for deliveries to the UK or Switzerland)

If you select the payment method PayPal, you must be registered with PayPal or register there first, legitimize yourself with your access data and confirm the payment instruction. Payment is processed by PayPal (Europe) S.à.r.l., Luxembourg. You will receive further information during the ordering process.

### Advance payment

If you choose to pay in advance, we will provide you with our bank details in the order confirmation, which we will send you by email. The goods will be dispatched after receipt of payment in our bank account. If BRAND does not receive the payment within 14 days after conclusion of the contract at the latest, the Customer is in default, and BRAND is entitled to withdraw from the contract.

### Purchase on account

It is possible to purchase on account up to a maximum order value of EUR 3.000/ GBP 3.000/ CHF 3.000. Invoice amounts are due for payment without deduction immediately or at the specified time in EURO and payable to the account stated by BRAND. The receipt of payment is decisive.

- 5.3 In the case of first-time orders, after delays in payment, or in the case of reasonable doubt about the creditworthiness of the Customer, BRAND may make the delivery dependent on advance payment or a security deposit in the amount of the invoice amount.
- 5.4 If more than 4 months elapse between conclusion and agreed delivery, BRAND may, at its reasonable discretion, demand a price increase corresponding to the cost increase at BRAND until delivery.
- 5.5 If the return of defect-free goods is agreed, the Customer shall be charged an inspection and handling fee amounting to 20% of the invoice amount (at least EUR 50/ GBP 50/ CHF 50).
- 5.6 If the Customer is in default of payment, all claims of BRAND shall become due immediately, and BRAND shall not be obliged to make further deliveries.
- 5.7 In the case of default of payment, BRAND shall charge default interest at the statutory rate – subject to further claims for damages.

- 5.8 Liabilities towards the Customer (e.g. from credit notes) may be offset by BRAND against open claims of BRAND against the Customer.

## 6. Retention of Title, Assignment in advance

- 6.1 The deliverables shall remain the property of BRAND until full and unrestricted payment has been received. If BRAND has any further claims against the Customer arising from the business relationship, the retention of title shall remain in force until they are paid.
- 6.2 The Customer may not consume goods subject to retention of title or combine them with other items in which third party rights exist. If, however, goods subject to retention of title become part of a new (total) item through combination with other items, BRAND shall become a direct proportionate co-owner of this item, even if it is to be considered the main item. The co-ownership rate of BRAND is based on the ratio of the invoice value of the goods subject to retention of title to the value of the new item at the time of combination.
- 6.3 The Customer may sell goods subject to retention of title in the course of his normal business, provided he/she has not assigned, pledged, or otherwise encumbered claims from the resale.
- 6.4 The Customer assigns to BRAND in advance by way of security the claims against buyers arising from the sale of goods subject to retention of title (Item 6.3) and/or newly formed objects (Item 6.2) in the amount of the invoice for the goods subject to retention of title. As long as the Customer is not in arrears with the payment of the goods subject to retention of title, the Customer can collect the assigned claims in the ordinary course of business. However, the Customer may use the proportional proceeds only to pay BRAND for the goods subject to retention of title.
- 6.5 At the Customer's request, BRAND will release securities of its own choice if and insofar as their value exceeds the claim to be secured by more than 20%.
- 6.6 The Customer must inform BRAND immediately of any seizure or confiscation of the goods subject to retention of title or co-ownership or other dispositions by third parties.
- 6.7 In the case of default of payment, failure or return of a payment by credit card or SEPA direct debit, discontinuation of payments, or insolvency of the Customer or the end user, the Customer's rights under Section 6.3 shall expire. The Customer is to draw the respective Buyer's attention to BRAND's extended retention of title of title without delay. The Customer may use the revenue shares relating to the assignment only to pay for the deliverables, and BRAND is entitled to collect the assigned claims itself.
- 6.8 In the event of culpable breaches of contractual obligations by the Customer, in particular in the cases of Item 6.7, BRAND is entitled to withdraw from the contract and/or, even without withdrawal, to demand the return of any goods subject to retention of title still in the possession of the Customer and to collect the assigned claims itself. In order to determine the rights of BRAND, BRAND may have all of the Customer's documents/books relating to the reserved rights inspected by a person bound to professional secrecy.

## 7. Warranty, Limitation of Liability

- 7.1 BRAND guarantees that the deliverables of BRAND are free of defects at the time of the passing of risk. The specified quality, durability, and use of the deliverables are based on the specification, product description, and/or operating instructions.
- 7.2 If the Customer needs the deliverables for purposes other than those agreed, he/she must check their specific suitability for these – also with regard to product safety – and their compliance with all relevant technical, legal, or official regulations at his/her own responsibility before the planned use. BRAND excludes liability for use not confirmed by BRAND. Compliance with safety and occupational health regulations depends on the location and conditions of use of which BRAND has no knowledge. Measures for compliance are therefore the responsibility of the Customer or the respective user.
- 7.3 BRAND shall not be held liable for the consequences of the improper handling, use, maintenance, and operation of the deliverables as well as for the consequences of normal wear and tear (in particular of wear parts such as pistons, seals, and valves as well as breakage of glass, plastic, and ceramic parts), chemical, electrochemical, or electrical influences, or non-compliance with the operating instructions.
- 7.4 In the event of a justified notice of defect, BRAND shall initially be obliged only to supplementary performance. Supplementary performance is, at the discretion of BRAND, either removal of defects or delivery of goods free of defects. Further claims for defects exist only in the event of refusal, impossibility, or failure of supplementary performance. Customs numbers assigned to BRAND (EORI number) may only be used for the return of delivered goods, whether for the rectification of defects or for other reasons, with the express written permission of BRAND.
- 7.5 The Customer must carefully inspect the deliverables immediately after receipt – also with regard to product safety – and give immediate written notice of obvious defects and hidden defects immediately after discovery. The Customer must report any transport damage to the deliverer immediately. In the event of non-observance of the duty of inspection and notification of defects, claims for defects by the Customer are excluded.
- 7.6 The liability of BRAND for slight negligence is limited to claims based on injury to life, body and health, to claims under the Product Liability Act, and to claims based on culpable breach of material contractual obligations that endanger the purpose of the contract. Furthermore, the liability of BRAND for slightly negligent violation of essential contractual obligations is limited to the typically occurring damage foreseeable by BRAND upon conclusion of the contract.
- 7.7 If the Customer uses the deliverables with environmentally harmful, toxic, radioactive, or otherwise dangerous substances, he/she must inform BRAND about these substances before returning the goods. Furthermore, the Customer is obliged to clean the deliverables. If the Customer fails to clean the equipment in accordance with the declaration of no health hazard, BRAND may charge the Customer for the costs incurred for the decontamination/cleaning and disposal of the hazardous substances arising in the process. If the equipment cannot be decontaminated/cleaned even by BRAND due to existing health hazards for the employees depending on the type of hazardous substances, the entire equipment shall be disposed of as hazardous waste. The costs incurred in this respect are to be borne by the Customer.

## 8. Statute of limitations

- 8.1 Claims for defects against BRAND expire by limitation within one year after delivery of the goods to the Customer. The same applies to claims for damages regardless of their legal basis.
- 8.2 The limitation periods of Sections 438, para. 1(1 and 2) and 634 a, para. 1(2) BGB remain unaffected.
- 8.3 Any rights of recourse in accordance with Section 445a BGB shall lapse within one year of delivery to the Customer.
- 8.4 The restrictions of the statute of limitations do not apply to claims based on the fraudulent concealment of a defect, to claims under the Product Liability Act, to damages resulting from injury to life, body, or health, and to other damages based on intent or gross negligence.
- 8.5 In the case of replaced or repaired deliverables, the statute of limitation shall start anew only when BRAND has acknowledged the defectiveness of the replaced or repaired deliverables.

## 9 Packaging

Insofar as no agreement to the contrary has been made, BRAND shall take back transport packaging, sales packaging of hazardous goods and reusable packaging that was part of a consignment of goods from BRAND at the BRAND plant in Wertheim, completely emptied, in order to fulfill its take-back obligation in accordance with § 15 of the German Packaging Act. The customer shall bear the costs of shipment to the place of performance.

## 10. Software Usage

- 10.1 Insofar as software is included in the scope of delivery, the customer is granted a non-exclusive right to use the delivered software including its documentation. It is provided for use on the delivery item intended for this purpose. Use of the software on more than one system is prohibited.
- 10.2 The Customer may only copy, transfer, translate, or convert the software from the object code to the source code to the extent permitted by law (Sections 69 a ff. Copyright Act). The Customer undertakes not to remove manufacturer's data – in particular copyright notices – or to modify it without the prior express consent of BRAND or the software supplier.
- 10.3 All other rights to the software and the documentation, including copies, shall remain with BRAND or the software supplier. The granting of sub-licenses is not permitted.

## 11. Spare Parts

If BRAND is obliged to keep/supply spare parts, this obligation shall be limited to a period of 5 years from delivery by BRAND. If spare parts are not manufactured by BRAND or are no longer available on the market – e.g. electronic components – or if the raw material for their manufacture is no longer available, the obligation of BRAND to supply spare parts shall expire.