

General Terms and Conditions of BRAND GMBH + CO KG

1 General

- 1.1 (Conflicting business conditions, written form, additional agreements and contract language) These General Terms and Conditions shall apply to all contracts, including all future contracts with the Customer. Other conditions shall not become a part of the contract even if we do not expressly object to such conditions. The Customer may only claim validity of additional agreements before or upon the conclusion of the contract only if they provide immediate written confirmation. Renunciation of the written form is only possible in writing. The language of the contract shall be German or English.
- 1.2 (Offers, right to make changes) Our offers are subject to confirmation. We reserve the right to make technical improvements to our products.
- 1.3 (Recording of data) We may store and process relevant contract data in our EDP systems.
- 1.4 (Setting off and retention) The setting off or the retention by the Customer is not permitted except in cases of undisputed or indefeasible counter claims.
- 1.5 (Rush orders/small orders) Orders with a value of the goods of less than 100 euros are subject to a low quantity surcharge of 20 euros. Delivery is normally in packing units according to the valid price list. For deliveries within five working days or for order values up to 500 euros, we reserve the right to ship and invoice immediately without separate order confirmation.
- 1.6 (Place of jurisdiction) The place of jurisdiction shall be the court responsible for our domicile in Wertheim/Mosbach, Germany. We are also entitled to call upon the court responsible for our customer's domicile. Furthermore, we as Plaintiffs have the right to call the arbitral tribunal at the Chamber of Industry and Commerce in Frankfurt am Main. In this case, the arbitral tribunal conclusively decides the legal dispute in accordance with the ICC Rules of Arbitration excluding the due legal process. The institution of legal dunning proceedings does not imply the exercise of our right to choose the plan of jurisdiction. It is in no way admissible.
- 1.7 German law is applicable, to the exclusion of the 'UN Convention on Contracts for the International Sale of Goods', CISG.

2 Delivery

- 2.1 Place of performance shall be our factory in Wertheim, Germany. The risk shall be transferred to the Customer when the delivery leaves the ramp in our factory. This shall apply also to partial deliveries and where we have undertaken additional services such as freight forwarding; costs of transporting, packing or insurance; exportation; and installation. This also applies in the case of delivery to a consignment warehouse.
- 2.2 Where we have accepted Orders on Call, Standing or Blanket Orders, the Customer must call up the entire order quantity within 6 months.
- 2.3 If there is any delay in the Customer's acceptance of a shipment, we may, at our own discretion, have the products stored at the Customer's expense or, after providing a warning and setting a deadline, sell the products for account of the customer.

3 Delivery period, Delay

- 3.1 Indicated delivery periods are ex works. Delivery deadline shall commence upon the Customer's receipt of our order confirmation; however, only after settlement of the technical questions that are still open at the conclusion of the contract and after we have received from the customer all documents, such as diagrams, permits or releases required from the Customer and definitely not before any advance payments that have been agreed upon. The delivery deadline is considered to have been observed if the readiness for shipment has been declared prior to the expiration of this period. Correct and punctual delivery remains a requirement.
- 3.2 Force Majeure, strikes, lockouts, operating breakdowns, shortages of raw materials or means of production for which we are not responsible, including delayed deliveries or failure to deliver by upstream suppliers, shall extend the delivery deadline accordingly and shall release us from our obligation to deliver if delivery becomes impossible as a result. We are considered not to be responsible for the aforementioned circumstances, even where they occur during an existing delay. The same applies in the case of additional or amended services requested by the customer.
- 3.3 Our default in delivery shall not exist unless the Customer has provided us with a warning and an indicated reasonable additional period of time has lapsed.
- 3.4 In the case of delay damages, we shall limit our liability for damage compensation to 10% of the value of our delayed delivery/service. The limitation does not apply in the case of wilful intent, gross negligence and/or damage to life, body or health. The Customer shall be obligated to promptly notify us in writing of any consequences of delay.

4 Prices, Terms of Payment

- 4.1 Prices quoted shall be ex works and do not include VAT, if applicable. Charges for packaging, freight and insurance shall be at the Customer's expense. The prices are understood to be exclusive of costs for the return and recycling/disposal of old equipment.
- 4.2 Invoices shall be paid in full, without deductions, and must be credited to our account in EURO (€) immediately or by the due date indicated on the invoice. Receipt of payment is applicable. We shall accept bills of exchange or checks only with a view to performance and at the Customer's expense.
- 4.3 In the case of customers, with whom we are working for the first time or with whom we do not regularly work, after delays in payment or in the case of reasonable doubt of the creditworthiness of the client, we retain the right to make any individual shipment dependent on payment in advance or a security deposit to the value of the invoice amount.
- 4.4 If the period between conclusion of the contract and the agreed delivery is longer than four months, we reserve the right to demand an extra charge, which corresponds to our cost increase until delivery, at our own discretion. For deliveries on call our then valid price shall apply.
- 4.5 In the case of an agreed return of faultless products, the customer will be charged a checking and processing fee to the value of 15% of the invoice amount (10 euros minimum).
- 4.6 If the Customer is in default of payment, then all of our debt claims against him shall be due immediately and we shall not be obligated to make any further deliveries based on current delivery contracts.
- 4.7 If default of payment occurs, we shall charge, notwithstanding further damage compensation claims, default interest to the amount legally allowed.
- 4.8 We may offset amounts payable to the Customer, such as a credit notes, against our claims against the Customer, if necessary.

5 Retention of Title and Assignment of Future Claims

- 5.1 Goods delivered shall remain our property until the complete and unlimited payment of all of our debt claims against the Customer. If we still have further claims against the customer, we reserve our property rights until the payment of this.
- 5.2 The Customer may neither use conditional goods nor merge nor combine them with other objects, to which a third party may have rights. If, however, conditional goods become a component of a new object, then we shall be a direct proportional co-owner of this object even if it constitutes a new legal entity. Our proportion of co-ownership shall be based on the relation of the invoice value of the conditional goods to the value of the new object at the time of the connection.
- 5.3 The Customer may resell the conditional goods in his normal course of business as long as his claims from the resale have not been assigned, pledged or otherwise encumbered.
- 5.4 The Customer shall assign to us in advance as collateral any claims against his customers from the resale of the conditional goods (see clause 5.3) and/or newly formed objects (see clause 5.2) to the value of our invoice for the conditional goods. If the Customer is not in default of payment for the conditional goods, he may collect the assigned claims in his normal course of business. However, he may only use the proportional proceeds for the payment to us for the conditional goods.
- 5.5 Upon the customer's request, we shall release collateral at our discretion, if and to the degree that the nominal value of the collateral exceeds 120 % of the nominal value of our open debt claims against the Customer.
- 5.6 The Customer is required to immediately inform us of any attachments, confiscation or any other right to disposal of a third party with regard to the conditional goods or the goods co-owned by us.

- 5.7 In the case of failure to pay in exchanges or checks, or if debit requests or direct debit authorizations are not carried out or are retroactively cancelled, or if the Customer or the end user become insolvent or suspend payments, the Customer shall lose all rights as per clause 5.3. The Customer must immediately notify any subsequent purchaser of our extended retention of property rights. He may only use the proportional proceeds, which are based on the assignment, for the payment of the goods delivered.
- 5.8 If default of payment occurs or in those cases covered in clause 5.7, we shall be authorized to withdraw from the contract, and/or to demand the return of any conditional goods, even without withdrawal, in the possession of the Customer and/or to collect the assigned debt claims directly. In order to determine our rights, we shall have the right to have the Customer's documents and books concerning our reserved rights examined by a person who is subject to the professional duty of confidentiality.

6 Defects and claims for damages

- 6.1 We shall be liable for insuring that our products, including any agreed installation, are free of defects at the time of the transfer of risk (clause 2.1). The required composition, shelf life and use of our products are based solely on the written agreed specification, product description and/or operating instructions. Any information beyond this and in particular in preliminary discussions, advertisement and/or referenced industrial standards shall only become a part of the contract if they are expressly referenced in writing.
- 6.2 If the Customer requires the delivered goods for purposes other than those agreed, he must check before use if the products are specially suitable for such purposes – including all aspects pertaining to product safety – and Customer is required to ensure that products comply with all relevant technical, legal and official regulations and requirements. We shall not be responsible for the fulfillment of any application not expressly confirmed by us in writing. We are not liable for material or design guidelines of the Customer, concerning the suitability or permissibility of the desired materials or designs and thus have no particular testing obligation.
The observation of safety-related and occupational health regulations depends on the place and conditions of the use, of which we have no knowledge. Measures of the observation of these regulations are, therefore, the responsibility of the user.
- 6.3 We shall not be liable for the consequences of improper handling, use, servicing or operation of the products or the consequences of normal wear and tear of wearing parts such as pistons, seals, valves and the breakage of glass, plastic or ceramic parts, for the consequences of chemical, electrochemical or electrical influences or the failure to follow the instructions in the operating instructions.
- 6.4 In the case of justified deficiency claims we shall only initially be required to provide subsequent performance (i.e. free replacement or repair at our sole discretion). Any additional warranty claims shall only exist due to rejection, impossibility or failure of said subsequent performance. Additional expenses, resulting from the fact that the goods have been relocated from the initial place of delivery, shall be borne by the Customer.
- 6.5 The Customer shall be obliged to promptly and carefully check incoming products – also for product safety – and to notify us of any apparent deficiencies in writing, any hidden defects as soon as they are found. The Customer must notify the carrier immediately of any transport damage. Non-observation of the obligation to check and give notice of defects will void any and all warranty claims for those deficiencies.
- 6.6 Our liability for slight negligence is limited to claims owing to injury to life, the body or the health, to claims from product liability as well as claims from the culpable breach of essential contractual duties, through which the contract is endangered. Incidentally, our liability for slightly negligent breach of essential contractual duties is limited to the typically incurring damages which we could have foreseen when the contract was concluded.
- 6.7 If the customer uses the delivered goods with materials that are harmful to the environment, poisonous, radioactive or dangerous in any other way, he shall be obliged to clean them prior to any return shipment. We can put any necessary costs of decontamination/cleaning and disposal in the client's invoice.

7 Limitation of actions

- 7.1 Claims for defects against us shall be limited to one year from delivery of the goods to the customer. The same shall apply to claims for damages no matter for what legal grounds. The period of limitations of § 438, paragraph 1, no. 1 and 2 of the German Civil Code, and § 479, paragraph 1 and 634a, paragraph 1, no. 2 remain unaffected.
The restriction of the statute of limitations shall not apply to claims owing to malicious non-disclosure of a defect, for claims according to product liability and for damages from injury to life, the body or the health and for other damages, which are due to wilful intent or gross negligence.

8 Software use

- 8.1 Insofar as software is contained in the delivery, the Customer will be granted the non-exclusive right to use the software delivered including its paperwork. It shall also be available for use on the specific delivery item. Use of the software on more than one system is prohibited.
- 8.2 The Customer may only copy, transfer or translate the software in a legally acceptable scope (§§ 69 a ff of Copyright Law (UrhG)) or convert from the object code into the source code. The Customer is obliged to not remove manufacturer's instructions, especially copyright entries, or to change them without prior permission from the Supplier.
- 8.3 All remaining rights to the software and the documentation thereof, including copies, remain with the Supplier and/or Software Supplier. The allocation of sublicenses is not permissible.

9 Installation

- 9.1 Installation costs can be invoiced monthly. Fixed installation prices shall only apply to the work, which has been agreed upon. In other cases, our price list for installation and service costs shall apply.
- 9.2 The Customer shall be responsible for providing the following if required at his own expense: lighting, motive power; compressed air, water, electrical power for welding, heating including any required connections, electrical installations for the connection of the products delivered by us, the required devices (e.g., hoisting equipment), a room, which can be closed, for storing material, tools and clothing during the installation.

10 Spare Parts, Maintenance/Repair and Calibration

- 10.1 For spare parts, maintenance, repair and calibration services the valid repair and replacement price list shall apply.
- 10.2 If we have an obligation to maintain/deliver spare parts, then this shall be limited to a period of five years from the date of delivery of the original product. If the spare parts are not manufactured by us or are no longer available on the market, e.g. electrical components, or if the raw materials required for their production are no longer available, then our obligation to supply spare parts shall lapse.
- 10.3 For calibration and servicing, normally disposables from our production lines shall be used.
- 10.4 Any servicing and/or calibration service may only be performed after the Customer has declared the absence of health hazards with regard to the devices sent.
- 10.5 For service values of up to 50 euros, we reserve the right to service / repair without providing a separate cost estimate.

11 Legal reservation, industrial proprietary rights, secrecy

- 11.1 We reserve ownership in any of the moulds, tools or other appliances, samples, diagrams, commercial or technical documents produced or provided by us as well as all copyrights, proprietary and intellectual property rights in any such item. This applies also if the Customer has wholly or partly borne the costs of this. The use of any such item by the Customer is subject to our prior written approval. The Customer is neither entitled to manufacture the subjects of this agreement nor to have them manufactured on his behalf, without our approval in writing.
- 11.2 If we deliver goods according to designs or other requirements specified by the customer (models, samples etc.), he is liable by default for ensuring that through the production and delivery of these products industrial property rights or other rights of third parties are not infringed. He shall be obligated by default to provide compensation for all damages resulting from such legal infringements.
- 11.3 All information acquired through the business relationship with us which is not deemed to be public knowledge shall be deemed proprietary and may not be disclosed by the customer to any third party.

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