# General terms and conditions of BRAND GMBH + CO KG for transactions with entrepreneurs outside the online shop

**1. General**

1.1 These General Terms and Conditions (GTC) apply exclusively to contracts between BRAND GMBH + CO KG (hereinafter „BRAND“ or „we“) and entrepreneurs (§ 14 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 their commercial or independent professional activity.

1.2 These General Terms and Conditions apply to all contracts – including future contracts – for products concluded between BRAND and the customer outside of our online shop. Any differing or supplementary terms and conditions of the customer shall not become part of the contract unless we have expressly acknowledged them in writing. Amendments and modifications to these General Terms and Conditions and any other agreements must be in writing to be legally valid. This also applies to any waiver of this written form requirement. Individual contractual agreements remain unaffected. The contract language is German and/or English. In case of discrepancies between the German version of these General Terms and Conditions and any other language version, the German version shall prevail.

1.3 Our offers are subject to change without notice. We reserve the right to make technical improvements to our products.

1.4 Personal data is processed in accordance with the provisions of the GDPR. We process personal data for initiating and fulfilling contracts, including payment processing, responding to inquiries, providing technical support and handling warranty claims, and based on our legitimate interest in maintaining our business relationship, improving our products and services, and ensuring quality. Data is only transferred to third parties to the extent necessary for the aforementioned purposes. Further information, in particular regarding your data subject rights, can be found in the privacy policy: https://www.brand.de/en/privacy-statement

1.5 Offsetting by the customer is inadmissible unless it is done with undisputed or legally established counterclaims or counterclaims for payment arising from the right to refuse performance pursuant to § 320 BGB (German Civil Code).

1.6 For transactions with customers who do not have a general place of jurisdiction within Germany, and with merchants, legal entities under public law, or special funds under public law, the place of jurisdiction is Frankfurt am Main. We are also entitled to bring an action before the court having jurisdiction over the customer‘s place of business. Furthermore, we have the right, as plaintiff, to refer the matter to the arbitration tribunal of the Frankfurt am Main Chamber of Industry and Commerce (IHK). In this case, the arbitration tribunal will decide the dispute finally in accordance with the Arbitration Rules of the Frankfurt am Main Chamber of Industry and Commerce, to the exclusion of recourse to the ordinary courts.

1.7 The law of the Federal Republic of Germany shall apply exclusively, excluding the conflict of laws rules of private international law and the United Nations Convention on Contracts for the International Sale of Goods (CISG).

**2. Delivery**

2.1 The place of performance is our factory in Wertheim. Unless otherwise agreed, delivery is FCA Wertheim (Incoterms® 2020 free carrier). The risk of accidental loss or damage to the product passes to the customer as soon as the goods have been packaged and loaded for transport, even if partial deliveries are made or if we provide other services, such as shipping, transport, packaging or insurance costs, export or installation. This also applies to deliveries to a consignment warehouse at the customer‘s premises.

2.2 Call-off orders must be fully accepted by the customer by the agreed date or within 6 months if no date was agreed.

2.3 Delivery is generally made in units of quantity according to the currently valid price list.

**3. Delivery times**

3.1 Delivery times are ex works. Delivery periods or dates are contingent upon the customer providing all necessary information and documents, such as drawings, permits, or approvals, in a timely manner, opening letters of credit as agreed, making advance payments, and fulfilling all other obligations incumbent upon them in a timely manner. In particular, the customer is obligated to provide all information (e.g., final recipient, final destination, and intended use), documents, permits, and certificates required for export, import, or transfer, as well as any other information, permits, and certificates that may be necessary for us to fulfill our obligations, without delay. If necessary permit, inspection, or information procedures are delayed, delivery periods and dates will be extended accordingly, unless we are solely responsible for the delay.

3.2 Correct and timely self-delivery remains reserved.

**4. Force majeure, delay**

4.1 If the failure to meet deadlines is due to force majeure, e.g. natural disasters, pandemics, epidemics, mobilization, war, riot or similar events beyond our control, e.g. strikes or lockouts, the deadlines shall be extended by the duration of the aforementioned event or its effects.

4.2 We will inform the customer immediately of any delivery obstacles or delays and their expected duration.

4.3 In any case, a delay in delivery requires a reminder from the customer with a reasonable grace period and the expiry of this grace period. The customer will inform us immediately in writing of any impending consequences of delay.

4.4 Liability for damages due to delay is limited to 10% of the value of the delayed delivery/service. This limitation does not apply in cases of intent, gross negligence, and/or injury to life, body, or health.

**5. Prices, Payment Terms**

5.1 Prices are exclusive of applicable statutory VAT. Packaging, transport, freight, and insurance costs are borne by the customer. Return shipping costs for maintenance or disposal are not covered.

5.2 Invoices are due immediately without deduction or at the specified date and, unless otherwise agreed, payable in EUR to the account designated by us. The date of receipt of payment is decisive. Bills of exchange and checks are accepted only on account of payment and at the customer‘s expense.

5.3 For customers with whom we are cooperating for the first time or not regularly, after payment delays or in case of justified doubts about the customer‘s creditworthiness, we have the right to make each individual delivery dependent on an advance payment or a security deposit in the amount of the invoice.

5.4 If more than 4 months lie between the conclusion of the contract and the agreed delivery date, we have the right, at our reasonable discretion, to demand a price surcharge that corresponds to our cost increase up to the time of delivery.

5.5 In the event of an agreed return of defect-free contract products, the customer will be charged a testing and processing fee of 20% of the invoiced value of the contract products, but at least EUR 50. The customer bears the costs of the return shipment.

5.6 If the customer defaults on a payment, all our further claims against him become immediately due and we are not obliged to make any further deliveries under current supply contracts.

5.7 In case of late payment, we will charge default interest at the statutory rate – subject to further claims for damages.

5.8 We are entitled to offset liabilities to the customer (e.g. from credit notes) against our outstanding claims against the customer.

**6. Retention of title, advance assignment**

6.1 Contract products remain our property until full and unrestricted payment has been received (hereinafter referred to as „retention of title“). If we have any further claims against the customer arising from the business relationship, the retention of title remains in effect until these claims have been settled.

6.2 The customer may not use our goods subject to retention of title or combine them with other items to which third parties hold rights. If, however, our goods subject to retention of title become part of a new (combined) item through combination with other items, we shall immediately become co-owners of this new item in proportion to its value, even if it is considered the principal item. Our co-ownership share is determined by the ratio of the invoice value of our goods subject to retention of title to the value of the new item at the time of combination.

6.3 The customer may resell our reserved property in the ordinary course of business, provided that he has not assigned, pledged or otherwise encumbered his claims arising from the resale.

6.4 If the customer sells our goods subject to retention of title pursuant to clause 6.3 and/or newly created items pursuant to clause 6.2, the customer hereby assigns to us, as security, claims against its customers up to the invoice value of our goods subject to retention of title. As long as the customer is not in default of payment for our goods subject to retention of title, it may collect the assigned claims in the ordinary course of business. However, it may only use the proportionate proceeds to pay for the goods subject to retention of title.

6.5 At the customer‘s request, we will release collateral of our own choosing if and to the extent that its value exceeds the secured claim by more than 20%.

6.6 In the event of attachments, seizures or other dispositions by third parties relating to our reserved title pursuant to clause 6.3 or the newly created items pursuant to clause 6.2, the customer shall inform us immediately.

6.7 In the event of default of payment, dishonored bills of exchange or checks, failure or reversal of a payment made via SEPA direct debit, cessation of payments, or insolvency of the customer or the end customer, the customer‘s rights under clause 6.3 shall expire; the customer must immediately inform the respective purchaser of the extended retention of title; the customer may only use the assigned proceeds to pay for the delivered contractual products. We are also entitled to collect the assigned receivables ourselves.

6.8 In the event of a culpable breach of the customer‘s contractual obligations, particularly in the cases specified in clause 6.7, we are entitled to withdraw from the contract and/or, even without withdrawal, to demand the return of any remaining goods subject to retention of title from the customer and to collect the assigned receivables ourselves. To ascertain our rights, we are authorized to have all documents/records of the customer relating to the retention of title rights inspected by a person bound by professional confidentiality.

**7. Warranty, Limitation of Liability**

7.1 We guarantee that our contractual products are free from defects at the time of transfer of risk. The required quality (durability, functionality, compatibility, safety) and use of the contractual products are governed by the agreed specification, product description and/or operating instructions.

7.2 Upon receipt, the customer must carefully inspect the contract products immediately – including for product safety – and report any obvious defects immediately, and any hidden defects immediately upon discovery, in writing. The customer must report any transport damage to the carrier immediately. Failure to comply with the inspection and notification obligations will preclude the customer‘s warranty claims.

7.3 If a product is defective and the customer has properly notified us of the defect in accordance with clause 7.2, the customer is entitled to the statutory warranty rights subject to the following provisions: We have the right to remedy the defect. Remedying the defect may, at our discretion, consist either of repairing the defect or delivering or providing a replacement product free of defects. Further claims for defects exist only if we refuse, if remedying the defect is impossible, or if it fails.

7.4 If the customer requires the contract products for purposes other than those agreed upon, they are responsible for verifying their suitability for these purposes – including with regard to product safety – and their compliance with all relevant technical, legal, or regulatory requirements before the intended use. We accept no liability for any usability not confirmed by us. We also assume no liability for the customer‘s material, design, or software specifications. Compliance with safety and occupational health regulations depends on the location and operating conditions. Therefore, measures to ensure compliance are the responsibility of the customer or the respective user.

7.5 We are not liable for consequences of improper installation, handling, use, maintenance and operation of the contract products, for consequences of normal wear and tear, in particular of wear parts such as pistons, seals, valves, as well as breakage of glass, plastic and ceramic parts, for the consequences of chemical, electrochemical or electrical influences or failure to observe the operating instructions, incompatibility with the customer‘s IT environment, violations of usage guidelines, failure to carry out necessary updates/updates or data loss if the customer has not taken appropriate measures for data security.

7.6 The customer is obligated to cooperate in troubleshooting, in particular by providing error descriptions, screenshots, or log files, and by granting access to the affected systems, provided this is reasonable. The customer will ensure that the content or systems in question are not modified without prior consultation to facilitate investigation.

7.7 In the event of a slightly negligent breach of essential contractual obligations, our liability is limited to the foreseeable, typically occurring damage. Essential contractual obligations are those whose fulfillment is necessary to achieve the purpose of the contract. Damages beyond this scope will not be compensated; these may include indirect damages and consequential damages such as production downtime and lost profits. The foregoing limitation of liability does not apply to injury to life, body, or health, nor to claims under the Produkthaftungsgesetz (German Product Liability Act). We are liable without limitation for intent and gross negligence. Otherwise, our liability is excluded.

7.8 If the customer uses the delivered goods with environmentally harmful, toxic, radioactive, or otherwise hazardous substances, they must inform us of these substances before returning the goods. Furthermore, the customer is obligated to clean the delivered goods. If the customer fails to clean the goods in accordance with the Declaration on the Absence of Health Hazards, we are entitled to invoice the customer for the costs necessary for the decontamination/ cleaning and disposal of the hazardous substances involved. If, due to existing health hazards to our employees, depending on the nature of the hazardous substances, we are unable to decontaminate/clean the equipment, the entire device must be disposed of as hazardous waste. The customer shall bear the associated costs.

7.9 Customs numbers (EORI numbers) assigned to us may only be used with our express written permission. This also applies to the return of delivered goods, whether for rectification of defects or for other reasons.

**8. Statute of limitations**

8.1 The customer's warranty claims expire one year after delivery or provision of the contractual product. This also applies to claims for damages, regardless of the legal basis.

8.2 The limitation periods of §§ 438 para. 1 no. 1 and 2 and 634 a para. 1 no. 2 BGB (German Civil Code) remain unaffected.

8.3 Any recourse claims pursuant to § 445a BGB (German Civil Code) shall become time-barred one year after delivery or provision of the contractual product to the customer.

8.4 The restrictions on the limitation periods do not apply to claims based on fraudulent concealment of a defect, to claims under the Produkthaftungsgesetz (German Product Liability Act), as well as to damages resulting from injury to life, body or health and to other damages based on intent or gross negligence.

8.5 For replaced or repaired contract products, the limitation period only begins to run anew if we have acknowledged the defectiveness of the replaced or repaired contract products.

**9. Packaging**

Unless otherwise agreed, we will take back empty packaging that was part of our shipment at our factory in Wertheim to fulfill our applicable legal take-back and disposal obligations. The customer bears the costs of transport to the place of performance.

**10. Software**

The following provisions apply to the licensing of software:

10.1 If separate license terms are provided to the customer (e.g., as part of the download or installation), these shall take precedence over the following provisions in case of any conflict.

10.2 If a contractual product contains software or if software is provided for the use of a contractual product, we grant the customer, upon transfer of risk of the contractual product or upon provision of the software, a simple, non-exclusive right to use the provided software, including its documentation, for its intended purpose in connection with the respective contractual product. Use of the software on more than one system is only permitted to the extent necessary for its intended use and permitted in the license terms.

10.3 The acquisition of licenses may also include the activation of functionalities already present on a contracted product or in a software installation, but not yet usable. The rights to use these functionalities become effective upon provision of the license key or other form of activation.

10.4 The customer may only reproduce, modify, transfer, translate, or reverse engineer the software to the extent permitted by law §§ 69a et seq. Urhebergesetz (German Copyright Act). The customer undertakes not to remove or alter manufacturer information – in particular copyright notices – without prior express consent.

10.5 All other rights to the software and documentation, including copies, remain with us or the software supplier. The granting of sublicenses is not permitted.

10.6 The software or license keys will be provided by sending a download link, by making them available in a customer account or on another digital platform, or by another agreed electronic means. The customer is responsible for ensuring that they have the necessary technical requirements for downloading, installing, and using the software.

**11. Assembly/Installation**

11.1 Assembly and installation costs may be billed monthly. Fixed prices apply only to the agreed-upon work.

11.2 The customer shall provide at his own expense: lighting, power, compressed air if necessary, water, welding current and heating including the necessary connections, electrical installations for connecting the contract products, the necessary equipment (such as lifting equipment), lockable room for storing material, tools and clothing during assembly.

**12. Spare parts, maintenance/repair/calibration**

12.1 Our current price list applies to spare parts as well as to maintenance, repair and calibration services.

12.2 To the extent that we are obligated to provide/supply spare parts, our obligation is limited to a period of 5 years from delivery. If spare parts are not manufactured by us or are no longer available on the market – e.g., electronic components – or if the raw materials for their manufacture are no longer available, our obligation to supply spare parts expires.

12.3 For calibration and maintenance, consumables from our production are generally used.

12.4 Maintenance and calibration services can only be provided if the customer has previously declared that the submitted devices pose no health risk.

12.5 For repairs/maintenance costs up to €50, we reserve the right to waive a separate cost estimate.

**13. Reservation of rights, industrial property rights, confidentiality**

13.1 Ownership and all industrial property rights and copyrights to molds, tools, or other devices, samples, illustrations, and commercial and technical documents manufactured or provided by us remain with us. This also applies if the customer has borne the costs for these items in whole or in part. The customer may only use them in the agreed manner. The customer may neither produce nor have produced the contractual items without our written consent.

13.2 If we supply contract products according to designs or other specifications (models, samples, etc.) provided by the customer, the customer is liable if the manufacture and delivery of these products infringes industrial property rights and other rights of third parties. The customer is obligated to compensate us for all damages resulting from such infringements if the customer is at fault.

13.3 The customer shall keep confidential all non-public knowledge arising from the business relationship to which these terms and conditions apply.

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