

GENERAL TERMS AND CONDITIONS OF SALE

Version 08/2023



I. Validity/Offers

1. The contractual partner on the basis of corresponding offers is always Brand Deutschland GmbH with its registered office in 39171 Sülzetal. Participating natural and legal persons who do not belong to the circle of buyer (customer) and seller (Brand Deutschland GmbH) assume an intermediary role. If ancillary agreements are made without the express consent of Brand Deutschland GmbH, these persons step out of the intermediary role and are fully liable for corresponding disputes.
2. These General Terms and Conditions of Sale shall apply to all deliveries, forward transactions, contracts and other contractual services. Should conditions be imposed by the buyer, we may expressly object to them even after they have been received by us several times.
3. Deviations of the delivery item from offers, samples, trial and preliminary deliveries are permissible in accordance with the respectively valid DIN/EN standards or other relevant technical standards.
4. The documents belonging to the offer such as drawings, illustrations, technical data, references to standards as well as statements in advertising material do not constitute quality specifications, property assurances or guarantees unless they are expressly designated as such in writing.
5. Our offers are subject to change. Contracts, in particular oral promises, guarantees, collateral agreements and other declarations by our personnel shall only become binding upon written confirmation by the management.
6. The seller submits to the regular sanctions according to the published regulations of the European Union and the United States of America. By placing the order, the buyer undertakes to check these and, in the event of a violation, to report this to the seller immediately. This invalidates the existing contractual relationship and the seller makes use of his right of withdrawal.

II. Prices

1. Unless otherwise agreed, our prices are ex place of manufacture excluding packaging, in each case plus VAT for domestic transactions.
2. If the goods are delivered packaged, we shall charge for the packaging at cost price; within the framework of the statutory regulations, we shall take back packaging delivered by us if it is returned to us carriage paid by the buyer within a reasonable period of time.

III. Payment and Settlement

1. Unless otherwise agreed, our invoices are due within 30 days, in each case from the invoice date. Payment shall be made within these periods in such a way that the amount required to settle the invoice is available to us at the latest on the due date. The buyer shall be in default at the latest 10 days after the due date of our claim without the need for a reminder.
2. Counterclaims disputed by us or not legally established entitle the buyer neither to retention nor to set-off.
3. If it becomes apparent during or after the conclusion of the contract that any claims for payment are jeopardised by the buyer's inability to pay, we shall be entitled to all rights pursuant to § 321 BGB (plea of uncertainty). This entitles us to immediately call due all claims not barred by the statute of limitations from the current business relationship with the buyer and to revoke the collection authorisation in accordance with clause V/5. In the event of default in payment, we shall also be entitled to demand the return of the goods after expiry of a 30-day grace period and to prohibit the resale and further processing of delivered goods by the customer. The taking back of the goods does not constitute a withdrawal from the contract. The buyer can only avert all these legal consequences by making payment or providing security in the amount of our endangered claim for payment. These provisions shall not affect any insolvency order in accordance with the regulations.
4. Counterclaims disputed by us or not legally established entitle the buyer neither to retention nor to set-off.
5. An agreed discount always relates only to the invoice value excluding ancillary services, unless this has been confirmed in advance by the management.

IV. Delivery terms

1. Delivery periods and dates shall only become legally valid upon confirmation of the order and shall be deemed to have been complied with if the delivery item has arrived at our premises by the time they expire. A delay in the delivery periods and dates is valid if the buyer has been informed by us at least 3 days before it is reached.
2. Our delivery obligation is subject to correct and timely self-delivery, unless the incorrect or delayed self-delivery is our fault.

V. Retention of title

1. All goods delivered shall remain our property (reserved goods) until all claims arising from the business relationship have been fulfilled, irrespective of the legal grounds, including claims arising in the future or conditional claims.
2. Processing of the goods subject to retention of title shall be carried out for us as manufacturer within the meaning of § 950 of the German Civil Code (BGB) without obligating us. The processed goods shall be deemed to be goods subject to retention of title within the meaning of Clause V/1. If the goods subject to retention of title are processed, combined or mixed with other goods by the buyer, we shall be entitled to co-ownership of the new item in the ratio of the invoice value of the goods subject to retention of title to the invoice value of the other goods used. If our ownership lapses as a result of combining or mixing, the buyer shall already now transfer to us the ownership rights to which he is entitled in the new stock or item to the extent of the invoice value of the reserved goods and shall keep them in safe custody for us free of charge. The co-ownership rights arising hereafter shall be deemed to be goods subject to retention of title within the meaning of Clause V/1.
3. The buyer may only sell the goods subject to retention of title in the ordinary course of business under his normal terms and conditions of business and as long as he is not in default, provided that the claims from the resale are transferred to us in accordance with Clauses V/4 to V/6. He is not entitled to dispose of the reserved goods in any other way.
4. The buyer's claims from the resale of the reserved goods are already assigned to us now. They serve as security to the same extent as the reserved goods. If the reserved goods are sold by the buyer together with other goods not sold by us, the assignment of the claim from the resale shall only apply to the amount of the resale value of the reserved goods sold in each case. In the event of the sale of goods in which we have co-ownership shares in accordance with Clause V/2, the assignment of the claim shall apply in the amount of these co-ownership shares.
5. The buyer is entitled to collect claims from the resale until our revocation, which is permissible at any time. We shall only make use of the right of revocation in the cases specified in Clause III/5. At our request, the buyer is obliged to inform his customers immediately of the assignment to us - insofar as we do not do this ourselves - and to provide us with the information and documents necessary for collection.
6. A seizure or impairment of the further processed goods by third parties does not release the buyer from his obligation to settle all our claims to the reserved goods.

VI. Execution of Delivery

1. With the handing over of the goods to a forwarding agent or carrier, but at the latest when the goods leave the warehouse, the risk in all transactions shall pass to the buyer. The duty and costs of unloading, as well as any insurance benefits, shall be borne by the buyer. We are entitled to make partial deliveries to a reasonable extent. In the case of customised goods, excess and short deliveries of up to 10% of the agreed quantity are permissible.
2. The aim is always an order-related complete delivery. Any necessary partial delivery is permissible, but will always be carried out after consultation with the customer and any additional costs incurred will be invoiced to the customer.
3. Within the scope of export transactions with delivery destination outside the EU, proof of export must be handed over to Brand Deutschland GmbH within one month, at the latest, however, after 3 months. If this deadline is exceeded, the goods will be charged the domestic German value added tax (currently 19%) and invoiced to the purchaser.
4. In the case of call-off orders, we are entitled to manufacture or have manufactured the entire order quantity in one go. Any change requests cannot be taken into account after the order has been placed unless this has been expressly agreed. Call-off dates and quantities can only be complied with within the scope of our delivery or manufacturing possibilities, unless fixed agreements have been made. If the goods are not called off in accordance with the contract, we shall be entitled to invoice them as delivered after the expiry of a 14-day grace period.

VII. Liability for Defects

1. In the event of a justified, immediate notice of defect, we may, at our discretion, remedy the defect or deliver a defect-free item (subsequent performance). Only in the event of failure of the supplementary performance can the purchaser reduce the purchase price or withdraw from the contract after setting and unsuccessful expiry of a 30-day period (from our warehouse in Sülzetal, excluding delivery to the place of destination). If the defect is not significant, he shall only be entitled to the right of reduction.
2. The basis for the removal or subsequent fulfilment of the defect is the burden of proof of the buyer. Should, in particular, the goods or samples complained about not be made available at our request, the customer may not invoke defects in the goods.
3. We shall only assume expenses in connection with subsequent performance insofar as we are responsible for them in the individual case through our fault or under guarantee. In particular, such expenses must be in reasonable proportion to the purchase price of the goods. We shall not bear any expenses incurred because the goods sold have been taken to a delivery address other than the contractually agreed delivery address.
4. Further claims are excluded in accordance with clause VIII. This applies in particular to claims for compensation for damage that did not occur to the goods themselves (consequential harm caused by a defect).

VIII. General limitation of liability and statute of limitations

1. We shall only be liable for breach of contractual and non-contractual obligations, in particular for impossibility, delay, culpa in contrahendo and tort - including for our executive employees and other vicarious agents - in cases of intent and gross negligence, limited to the typical contractual damage foreseeable at the time of conclusion of the contract.
2. These limitations shall not apply in the event of culpable breach of essential contractual obligations, insofar as the achievement of the purpose of the contract is jeopardised, in cases of mandatory liability under the Product Liability Act, in the event of injury to life, limb or health and also not if and insofar as we have fraudulently concealed defects in the item or guaranteed their absence. The rules on the burden of proof remain unaffected by this.
3. Unless otherwise agreed, the buyer's contractual claims against us arising in connection with the delivery of the goods shall become time-barred 6 months after delivery of the goods. This period shall also apply to such goods which have been used in accordance with their usual manner of use for a building and have caused its defectiveness, unless this manner of use has been agreed in writing. This shall not affect our liability for intentional and grossly negligent breaches of duty or the limitation of statutory rights of recourse. In cases of subsequent performance, the limitation period shall not begin to run again.

IX. Copyright

1. We reserve the right of ownership and copyright to cost estimates, drafts, drawings and other documents; they may only be made accessible to third parties in agreement with us. Drawings and other documents belonging to offers shall be returned upon request.
2. If we deliver goods according to sketches, samples or other documents handed over by the buyer, the buyer shall guarantee that industrial property rights of third parties are not infringed. Should third parties prevent us from manufacturing and delivering such goods, in particular due to property rights, we reserve the right - without examining the legal situation - to discontinue further contractual services and to claim damages if the buyer is at fault. The buyer also undertakes to indemnify us immediately against any claims by third parties in this connection.

X. Test parts, moulds, tools

1. If the buyer has to provide parts for the execution of the order, they shall be delivered free production site with the agreed quantity, otherwise with an appropriate additional quantity for any rejects, in good time, free of charge and free of defects. If this is not done, any costs and other consequences caused thereby shall be borne by the buyer.
2. The production of test parts including the costs for moulds and tools shall be borne by the buyer.
3. Property rights to moulds, tools and other devices required for the manufacture of ordered parts shall be governed by the agreements made. If such devices become unusable before the agreed output quantity has been fulfilled, the costs required for their replacement shall be borne by the buyer. We undertake to keep such devices available for at least two years after their last use.
4. For tools, moulds and other production equipment provided by the buyer, our liability is limited to the same care as in our own business. Costs for maintenance and care shall be borne by the buyer. Our obligation to store the goods shall expire - irrespective of the purchaser's ownership rights - at the latest two years after the last production from the mould or tool.

XI. Place of performance, place of jurisdiction and applicable law

1. The place of performance for our deliveries is our company. The place of jurisdiction for the buyer is the district court of Oschersleben. We can also sue the buyer at his place of jurisdiction.
2. All legal relations between us and the Buyer shall be governed by German law in addition to these Terms and Conditions, including the provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG) of 11 April 1980.

XII. Authoritative version

In cases of doubt, the German version of these General Terms and Conditions of Sale shall prevail.